Feb. 17. Reversed - Wayne.

SUPREME COURT OF THE UNITED STATES.

No. ~~178.~~ 104.

Richard S. Blackburn, Plaintiff ~~in Error~~

vs

THE LESSEE OF GEORGE T. CRAWFORD ET AL., ~~PLAIN-TIFF~~ Deft. IN ERROR,

~~RICHARD S. BLACKBURN.~~

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 178.

THE LESSEE OF GEORGE T. CRAWFORD ET AL., ~~PLAINTIFF~~ Deft IN ERROR,

ads

RICHARD S. BLACKBURN. P. E.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the first Monday of November, in the year of our Lord one thousand eight hundred and sixty-two—

Present: the honorable William F. Giles, judge of Maryland district; William Price, esquire, attorney; Washington Bonifant, esquire, marshal; Thomas Spicer, clerk—

Among other were the following proceeding, to wit:

GEORGE T. CRAWFORD, lessee,
vs.
RICHARD S. BLACKBURN.

Be it remembered, that on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and sixty, the said Richard S. Blackburn, by Thomas F. Bowie and John B. Brooks, his attorneys, filed in the circuit court here the transcript of a record from the first judicial district of Maryland in and for Prince George's county, in the words and tenor following, to wit:

STATE OF MARYLAND,
Prince George's County, sct:

At a circuit court of the district judicial circuit of Maryland, begun and held at Upper Marlborough town, in and for Prince George's county, on the first Monday in November, being the fifth day of the same month, in the year of our Lord one thousand eight hundred and sixty, and in the year of the independence of the United States of America the eighty-fifth, were present 2 the honorable Peter W. Crane, circuit judge; Daniel R. Dyer, esquire, sheriff; Charles S. Middleton, clerk.

In the record and proceedings of the same court, amongst others are the following, to wit:

GEORGE T. CRAWFORD, JOHN H. SANSBURRY, MARY E., his wife; DANIEL R. WALL, SARAH J., his wife; PHILIP HILL, ANNA V., his wife, lessees,
vs.
RICHARD S. BLACKBURN, tenant.

Be it remembered, that heretofore, to wit, on the second day of October, eighteen hundred and sixty, John Derr, lessee of George T. Crawford; John H. Sansburry, Mary E., his wife; Daniel R. Wall and Sarah J., his wife; Philip Hill and Anna V., his wife, by Samuel H. Berry, their attorney, declared in the circuit court here against Richard Fenn, Richard S. Blackburn, tenant, in a plea of trespass and ejectment, with a notice thereto annexed in manner and form following, to wit:

STATE OF MARYLAND,
Prince George's County, to wit:

Richard Fenn, late of Prince George's county, was attached to answer unto John De[illegible] in a plea, wherefore, with force and arms, &c., at the county aforesaid, rr he entered into all those tracts, parts of tracts, or parcels of plantable 3 land called "Greenwood Park," "Greenwood Park Enlarged," "West Phalia," "Federal Hills," "Waring's Grove," and "Ranaligh," lying

and being in said county, containing fifteen hundred acres, with the appurtenances, which George T. Crawford, John H. Sansburry and Mary E. Sansburry, his wife; Daniel R. Wall and Sarah J. Wall, his wife; and Philip Hill, jr. and Anna V. Hill, his wife, demised to the said John for a term of years, which is not yet expired, and ejected him from his said farm, and other wrongs to the said John and against the peace, government, and dignity of the State, &c.; and whereupon the said John, by Samuel H. Berry, his attorney, complains that the said George T. Crawford, John H. Sansburry and Mary E. Sansburry, his wife; Daniel R. Wall and Sarah J. Wall, his wife; and Philip Hill, jr., and Anna V. Hill, his wife, heretofore, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and sixty, at the county aforesaid, had demised to the said John all *all* those tracts, parts of tracts, or parcels of plantable land, called Greenwood Park, Greenwood Park Enlarged, West Phalia, Federal Hills, Waring's Grove, and Ranaligh, lying and being in the county aforesaid, containing fifteen hundred acres, with the appurtenances, to have and to hold the same to the said John and his assigns from the thirty-first day of December, then last past, for and during and unto the full end and term of fifteen years thence next ensuing, and fully to be completed and ended,
by virtue of which said demise the said John entered into the said
4 tracts, parts of tracts, or parçels of plantable land, with the appurtenan-
ces, and was possessed thereof; and being so possessed thereof, the said Richard afterwards, to wit, on the said first day of January, in the year eighteen hundred and sixty aforesaid, with force and arms, that is to say, with sword, staves, and knives, at the county aforesaid, entered into the said tracts, parts of tracts, or parcels of plantable land, with the appurtenances, which the said George T. Crawford, John H. Sansburry and Mary E. Sansburry, his wife; Daniel R. Wall and Sarah J. Wall, his wife; and Philip Hill, jr. and Anna V. Hill, his wife, had demised to the said John in manner aforesaid, for the term aforesaid, which is not yet expired, and ejected the said John from his said farm, and other wrongs to the said John then and there did, to the great damage of the said John and against the peace, government, and dignity of the State, &c.; wherefore the said John saith he is injured and hath sustained damage to the value of one hundred thousand dollars, and therefore he brings his suit, &c.

SAMUEL H. BERRY,
Plaintiff's Attorney.

"SIR: I am informed that you are in possession of or claim title to the
5 premises in this declaration mentioned, or to some part thereof, and I
being sued in this action as a casual ejection, and having no claim or title to the same premises, do advise you to appear at Prince George's court on the first Monday in November next, to be held at Upper Marlborough town, by some attorney of that court, and then and there, by rule of the same court, to cause yourself to be made defendant in my stead; otherwise I shall suffer judgment to be entered against me, and you will be turned out of possession.

"I am, your loving friend,

"RICHARD FENN.

"October 1, 1860.

"To RICHARD S. BLACKBURN, tenant in possession of the premises or some part thereof."

A copy of which said declaration and notice was made and delivered to the sheriff of Prince Georges's county aforesaid, thereon endorsed, "to be served on the defendant, tenant in possession, or left on the premises at least ten days before court."

And now here, at this day, to wit, the first Monday of November, being the fifth day of the same month, in the year of our Lord one thousand eight hundred and sixty, and the day of the return of the service of the aforegoing declaration in ejectment, comes into the circuit court here the said George T. Crawford, John H. Sansburry and Mary E., his wife; Daniel R. Wall and Sarah J., his wife; Philip Hill, jr. and Anna V., his wife, lessees of the said John Derr, by Samuel H. Berry and Nicholas C. Stephens, esquires, their attorneys, and the sheriff of Prince George's county aforesaid, to wit, Daniel R. Dyer, esquire, to whom a copy of the said declaration in ejectment and notice aforesaid was in form aforesaid made and delivered, certifies his service thereof to the court here in form following, to wit:

6 "Left on the premises Oct. 22d, 1860."

Whereupon the said Richard S. Blackburn, tenant, appears in court here, by Caleb C. Magruder, John B. Brooke, Thomas S. Alexander, and Thomas F. Bowie, esquires, his attorneys; and thereupon the said tenant, by his attorneys aforesaid, files in court here the following motion for removal, to wit:

George T. Crawford, John H. Sansburry and Mary E., his wife; Daniel R. Wall and Sarah J., his wife; Philip Hill, Jr. and Anna V., his wife, lessees,
vs.
Richard S. Blackburn, tenant.

Ejectment in the circuit court for Prince George's county.
Nov. term, 1861.—No. 180 appearances.

The defendant in this action, by Thomas F. Bowie and John B. Brooke, his attorneys, respectfully state, that he is advised that the above action has been improperly brought against him in this court, for the reason that he, the said defendant, is a citizen of the State of Virginia; and further, that the matter in dispute exceeds in value the sum of five hundred dollars, exclusive of costs; he therefore, by his counsel, moves the court here that the said cause may be removed for trial to the next circuit court of the United States to be 7 held in the district of Maryland, the defendant being ready and offering sufficient surety for entering into said court copies of the process against him on the first day of its session, and also for his appearing in said circuit court.

THOMAS F. BOWIE,
JOHN B. BROOKE,
For Defendant.

Sworn to in open court.

CHAS. S. MIDDLETON, *Clerk.*

At the time of filing the aforegoing motion, the said defendant also files in court here the following bond, to wit:

Know all men by these presents that we, Richard S. Blackburn, of Clarke county, in the State of Virginia, and John B. Brooke and C. C. Magruder, of Prince George's county, in the State of Maryland, are held and firmly bound unto George T. Crawford, John H. Sansbury, and Mary E., his wife, Daniel R. Wall, Sarah J., his wife, Philip Hill, jr., and Anna V., his wife, all of Prince George's county, in the State of Maryland, in the full and just sum of five thousand dollars, current money of the United States, to the payment of which we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 9th day of November, anno Domini 1860.

Whereas a certain Richard S. Blackburn, of Clarke county, in the State of Virginia, in the pursuance of the twelfth section of an act of Congress of the United States, passed on the twenty-fourth day of September, 1789, entitled "An act to establish the judicial courts of the United States," by his 8 counsel moved the circuit court for Prince George's county, in writing, for the removal for trial into the next circuit court of the United States for the district of Maryland aforesaid, of a certain cause depending in said circuit court wherein the said George T. Crawford, John H. Sansburry, and Mary E., his wife, Daniel R. Wall, and Sarah J., his wife, Philip Hill, jr., and Anna V., his wife, are plaintiffs, and the said Richard S. Blackburn is defendant:

Now, the conditions of the above obligation are such, that if the said Richard S. Blackburn shall not, on the first day of the next session of the said circuit of the United States for the district of Maryland, enter therein copies of the process and proceedings in the said suit of George T. Crawford *et als.* against him, and appear thereto in the said last-mentioned court, according to the provisions of the said act of Congress, then, and in that case, this obligation is to be and remain in full force and virtue in law, otherwise to be void and of no effect.

DANIEL CLARKE,
For C. C. MAGRUDER.
R. S. BLACKBURN. [SEAL.]
JNO. B. BROOKE. [SEAL.]
C. C. MAGRUDER. [SEAL.]

Signed, sealed, and delivered, in the presence of—
T. F. BOWIE.

Bond and securities approved Nov. 9th, 1860.

P. W. CRAIN.

And thereupon the court here passed the following order in the premises, to wit:

In the circuit court for Prince George's county, November term, 1860.

GEORGE T. CRAWFORD *et als.*
vs.
RICHARD S. BLACKBURN.
} No. 180, appearances.

9 The defendant in this suit, who is a citizen of the State of Virginia, having entered his appearances by counsel, and having, at the time of the entering thereof, filed his motion in writing for the removal of said suit for of trial to the next circuit court of the United States to be holden for the district Maryland, according to the provisions of the act of Congress passed on the 24th day of September, 1789, chap. 20, sec. 12, and having offered good and sufficient security for his entering in said circuit court of the United States, of the first day of its next session, copies of the process and proceedings herein against them, and also for his appearing there, it is thereupon, the 15th day of April, 1860, ordered by this court, that said suit be removed to the said circuit court of the United States.

PETER W. CRAIN.

Nov. 15*th*, 1860.

Thereupon, and in pursuance of the foregoing order, all and singular proceedings aforesaid, in the cause aforesaid, are hereby transmitted to the said circuit court of the United States for the district of Maryland accordingly.

Test: CHAS. S. MIDDLETON, *Clerk.*

MARYLAND, *Prince George's County, sct:*

I hereby certify that aforegoing is truly taken and copied from the record and proceedings of the circuit court for Prince George's county. In testimony whereof, I have herewith subscribed my name and affixed the seal of the circuit court for Prince George's county, this twenty-second day of December, anno Domini one thousand eight hundred and sixty.

CHAS. S. MIDDLETON,
Clerk of the Cir. Co't for Prince Geo. Co., Md.

10 And now, here, to wit, the first Monday in April, in the year of our Lord one thousand eight hundred and sixty-one, the said Richard S. Blackburn appears in court here, by Thomas S. Alexander, Thomas F. Bowie, John B. Brooke, his attorneys aforesaid, and confess lease, entry, and an actual ouster and expulsion of the laws and tenements of the said lessees as aforesaid, as is in the possession of the said Richard S. Blackburn, or his tenants, or any other person claiming by or under his title, and the said Richard S. Blackburn defends the force and injury, when, and says that he is not guilty of the trespass and ejectment aforesaid, in the December aforesaid, mentioned in manner and form as the said lessee as aforesaid above complains against him, and of this he puts himself upon the country, and the said lessee as aforesaid in like manner.

Thereupon further proceedings, and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the first Monday in November next.

At which said 1st Monday in November, in the year of our Lord one thousand eight hundred and sixty-one, came again into the circuit court here the parties aforesaid, by their attorneys aforesaid.

11 Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, by order of the court here thereon, continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord one thousand eight hundred and sixty-two, came into the circuit court here the parties aforesaid, by their attorneys aforesaid, and

And the said plaintiff, by his attorney aforesaid, filed in the circuit court here an affidavit in the words following, to wit:

U. S. circuit court for district of Maryland.

LESSEE OF CRAWFORD *et al.*
vs.
BLACKBURN.

In open court personally appears Robert J. Brent, of counsel for the above plaintiff, and made oath on the Holy Evangely of Almighty, that in the above entitled cause the testimony of the Rev. John P. Donellan is wanting, and that he believes the same is necessary; and that the above-named plaintiffs cannot, with safety and justice to themselves, proceed to the trial of the above-entitled cause at this term, for the want of a material and competent witness in the said cause residing or living out of the district of Maryland, to wit, the said John P. Donellan, now living and residing in the State of Illinois; that the said John P. Donellan is a material and competent and proper witness for the said
12 plaintiffs in the said cause, by whom the deponent expects that the said
plaintiffs will be enabled to prove that the plaintiffs are the legitimate children of Thomas B. Crawford, deceased, by his lawful wife, Elizabeth Taylor, with whom the said Thomas B. Crawford intermarried in Washington city, in the District of Columbia, and that the fact of such intermarriage was duly recorded in a book then kept as a marriage register in St. Patrick's church, in Washington city, which book is now lost, and cannot be found by diligent search in all proper places; that since the last term of this court deponent, as counsel of the plaintiffs, hath written two letters to said Donnellan, addressed to him at his proper post office, urging him to come on and testify orally in this cause, and informing him that he was furnished with and would remit the requisite funds to send Donellan to defray his expenses coming along and returning from Baltimore, as a witness at this court, if he, the said Donnellan, would

agree to come, but *if he would agree to come, but if he would agree to come, but* if he would not or could not come, deponent, in said letter, desired the said Donellan to furnish him with the names of five persons who could be used by the plaintiff as commissioners to take the testimony of said Donellan; but deponent hath received no reply to either of said letters, although both of them were written a sufficient time before this term to have enabled deponent to receive reply thereto by due course of mail, and deponent states that he hath
13 used his proper and reasonable endeavors to procure the testimony and attendance of said Donellan at this court, and he made such endeavors at the request of the plaintiffs, as their allowing, they furnishing him with the money requisite to procure the attendance of said Donellan at this term. Deponent further saith that he hopes and expects that the plaintiffs will be able to procure the attendance of said Donellan at the next term of this court; and deponent further saith that the motion to continue said cause at this term is not made for delay, but for the purposes hereinbefore stated, and for justice.

R. J. BRENT.

Subscribed by said deponent, and sworn to by him in open court this day of April, 1862.

Sworn to in open court April 10, 1862.

THOS. H. SPICER, *Clerk.*

Filed 10 April, 1862, 7 folio.

And the said Richard S. Blackburn gives the court here to understand and be informed, that after the last entrance of the plea aforesaid, and before this day, to wit, the said George H. Sansburry, one of lessees of the plaintiff, died, which allegation Richard S. Blackburn doth not deny; therefore let no further proceedings be had at the suit of the said George T. Crawford and others. Thereupon further proceedings upon the premises aforesaid, between the parties aforesaid, and by consent of said parties and their attorneys aforesaid, by order of the court here therein, is further continued until the first Monday in November next.

At which said first Monday in November, in the year of our Lord one thousand eight hundred and sixty-two, come again into the circuit court here the parties aforesaid, by their attorneys aforesaid.

14 Whereupon, for trying the issue aforesaid, it is ordered by the court here that twenty persons from the panel of petit jurors, retained to the court here by the marshal of the Maryland district aforesaid, be drawn by ballot, and thereupon the 20 persons being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the court for each of the said parties having stricken out 4 persons from the said lists, thereupon the remaining twelve persons being called, come, to wit:

1st, James Jeffrey; 2, Reuben Lake; 3, Henry Bennett; 4, Richard Lean; 5, John E. Lamb; 6, Nicholas Stiltz; 7, Nicholas Hutchinson; 8, John McComas; 9, John H. Young; 10, Adam Keller; 11, Andrew Swartz; 12, James C. Dauty;

Who, being empanelled and sworn to say the truth in the premises, upon their oath do say, that the said Richard S. Blackburn is guilty of the trespass and ejectment aforesaid, in manner and form aforesaid, as the said George T. Crawford, lessee as aforesaid, within against him have declared, and they assess the damages of the said George T. Crawford, lessee as aforesaid, by occasion of the trespass and ejectment, to one cent.

Therefore it is considered by the court here that the said Geo. T. Crawford, lessee as aforesaid, recover against the said Richard S. Blackburn his term aforesaid yet to come and unexpired, of, in, and unto all the premises mentioned in the declaration, so as aforesaid by the jury found, and the said sum of one

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cent, by the jurors aforesaid, in form aforesaid, assessed for his damages, 15 which he hath sustained by occasion of the trespass and ejectment aforesaid, and that the said George T. Crawford, lessee as aforesaid, have thereof his possession against the said Richard S. Blackburn, and so forth; and it is also considered by the court here that the said Geo. T. Crawford, lessee as aforesaid, recover against the said Richard S. Blackburn the sum of $, by the court hereunto him, have on his assent adjudged for his cost and charges by him about his suit in this behalf laid out and expended, and the said Richard S. Blackburn in mercy, &c.

Memorandum.

Before the jurors aforesaid withdrew from the box of the court here, the parties, by their attorneys aforesaid, tendered to the court here the following bills of exception, which were by the court here signed and sealed, according to the statute in such case made and provided, and which are in form following, to wit:

Circuit court U. S., district of Maryland.

GEORGE T. CRAWFORD and others, lessees,
vs.
RICHARD S. BLACKBURN. } 1st Exception

At the trial of this action, the plaintiff, in order to maintain the issue joined on his part, offered to read to the jury the deposition of John P. Donnellan, as follows, to wit:

16 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To William Lathrop and James Marsh, of Rockford, Illinois, esquires, greeting:

Be it known that you are appointed commissioners to examine evidences in a cause now depending in the circuit court of the United States for the fourth circuit, in and for the Maryland district, between the lessees of G. T. Crawford, plaintiff, and Richard S. Blackburn, defendant.

Therefore you are hereby required, having first taken the oath hereunto annexed and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that at such time and place as to you shall seem convenient, you cause to come before you all such evidences all shall be named or produced to you by either the plaintiffs or defendant, and that you examine them upon their corporal oaths, to be by you administered upon the Holy Evangely of Almighty God, touching their knowledge or remembrance of anything that may relate to the cause aforesaid; and having reduced the depositions of the witnesses so taken by you into writing, you send the same, with this commission, closed under your hands and seals, to the said circuit court with all convenient speed.

Witness the honorable R. B. Taney, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-one.

R. J. B.—Issued 23 July, 1862.

THOS. SPICER, *Cl'k Circ't C't.*

17 *Commissioner's oath.*

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties, take the examinations and depositions of all and every witness and witnesses produced and examined, by virtue of the commission hereunto annexed, upon the interrogatories now or which may hereafter, before the said commission is closed, be produced to and left with you by either party: so help you God.

Sworn to by William Lathrop, this 20th October, 1862, before me.

OLIVER A. PENMYER,
Clerk Circuit Court Winnebago County, Illinois.

Clerk's oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, and transcribe the depositions of all and every the witnesses produced before and examined by the commissioners named in the annexed commission, as far forth as you are directed and employed by the said commissioners to take, write down and transcribe the said depositions or any of them: so help you God.

Circuit court U. S. for the district of Maryland.

LESSEE OF G. T. CRAUFURD *et al.*
vs.
RICHARD S. BLACKBURN.

Interrogatories to be propounded to the Reverend John P. Donelan, a witness produced on the part of the above plaintiffs.

18 1st. State whether or not you were acquainted with the late Thomas B. Craufurd, of Prince George's county, in the State of Maryland, and with Elizabeth Taylor, otherwise Craufurd.

2d. State whether or not you were at any time, and when, a pastor or minister resident at St. Patrick's church, in Washington city. If you state you were such pastor or minister resident at St. Patrick's church, then state whether or not you were acquainted with the reverend Mr. Fiziac; and if you know him, state where he resided, and in what capacity, at the period of your knowing him, giving as nearly as possible the years of such residence on his part.

3d. State whether or not you were acquainted with the late Mrs. John Evans, the wife of the sexton of St. Patrick's church; and if you were so acquainted, state what you know touching her relationship to the aforesaid Elizabeth Taylor, otherwise called Craufurd, and what you know relating to the declarations of said Mrs. John Evans, (if any such declarations were made by her to your knowledge,) touching the condition of said Elizabeth, in respect to her being married or unmarried; and if married, to whom; and said declarations as her husband. In answering this interrogatory, and in case you have knowledge of any declarations by Mrs. John Evans, touching the matters herein inquired about, please give all the particulars of such declarations relating to said matters, as fully as you may recollect the same.

19 4th. State what you may know in relation to any child of said Elizabeth Taylor being baptized or christened; and if you know of such baptizing or christening, state by whom the ceremony was performed, and whether a register or record book of such ceremony was kept, and by whom; and if such child was baptized or christened to your knowledge, state how the same ought to have been entered or recorded to distinguish the fact whether such child was at the time of the ceremony represented and believed to be legitimate or illegitimate.

5th. State what you may know concerning a marriage registry or record-book of marriages having been kept at St. Patrick's church in Washington city, at any time, particularly in the years 1834, and 1835, and 1836; and if you know of such registry or record being kept, state where you last saw the same, and in whose custody the same was and ought now to be, and state what you know

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concerning or touching every entry therein relating to an alleged marriage between Thomas B. Craufurd and Elizabeth Taylor; and if you have knowledge of such entry, state what you know of the handwriting in which the same was made, and especially state what you know touching said entry having been made in the regular and *bona fide* discharge of the duties of the person by whom the same was made.

6th. State any other facts or circumstances known to you, and material to be known, in relation to the matter in controversy between the parties, which involves the question whether Thomas B. Craufurd and Elizabeth Taylor were married or not married.

ROBERT J. BRENT,
SAMUEL T. BERRY,
THOS. G. PRATT,
——— BELT,
For Pl'ff.

20 It is agreed that a commission issue to William Lathrop and Jason Marsh, of Rockford, Illinois, to take testimony in the within-entitled cause. Due service of a copy of the written interrogatories is admitted.

TH. S. ALEXANDER,
For Def't.
ROBT. J. BRENT.
For Pl'ff.

Circuit court U. S., 4th circuit, Md. district.

CRAUFURD AND OTHERS, lessee,
vs.
Dr. R. S. BLACKBURN.

We agree that the commission to take testimony in this case, issued to William Lathrop and —— Marsh, of Illinois, may be executed by Lathrop alone, as if he was the only commissioner therein named. The commission to be executed on the 13th instant, or on any day thereafter.

TH. S. ALEXANDER,
For Def't.
R. J. BRENT,
For Pl'ff.

8th October, 1862.

To the honorable the Circuit Court of the United States for the 4th circuit in and for the district of Maryland:

By virtue of the foregoing and annexed commission and agreement of counsel, the undersigned does certify and return to your honorable court, that having first taken the oath annexed to said commission, before Oliver A. Penmyer, clerk of the *the* circuit court of Winnebago county, in the State of Illinois, who was and is duly authorized to *to* administer oaths, I caused to come before me, on
the thirty-first day of October, A. D. 1862, at Rockford, in the State of
21 Illinois, the Reverend John P. Donelan, a competent witness on the part
of the plaintiff named in said commission, who being examined by me upon his corporal oath, administered by me upon the Holy Evangely of Almighty God, to testify the truth, the whole truth, and nothing but the truth, touching his knowledge or remembrance of anything that may relate to the cause named and described in said commission, testified as follows:

1st. In answer to the first interrogatory hereto annexed, he saith: I remember to have seen, on several occasions, one Thomas B. Craufurd, whom I always understood to be of Prince George's county, Maryland; and I remember to have seen on several occasions Elizabeth Taylor, otherwise Craufurd.

2d. In answer to the second interrogatory he saith: I was assistant pastor, under Father Matthew, from the year 1836 to 1840, of St. Patrick's church, in Washington city; I never met the Reverend Mr. Fiziac but once, and that was in St. Mary's Seminary, in Baltimore, in the year 1855 or 1856. (I always understood and believed the Reverend Mr. Fiziac resided with Father Matthew, as his assistant, for several years prior to my becoming such assistant,) except the period of a few months immediately prior to my becoming such assistant, when Father King, S. J., of Georgetown College, acted as such assistant. I was appointed such assistant in July, A. D. 1836, (and to the best of my remembrance and belief, the Reverend Mr. Fiziac had then resided at St. Patrick's church as assistant pastor under Father Matthew, for three or four years then last
22 past, except the time Father King had officiated as such assistant.)

3d. In answer to the third interrogatory he saith: I was acquainted with the late Mrs. John Evans, wife of the sexton of St. Patrick's church; I was so acquainted with her at least from the year 1836 to 1840. (I always understood and believed her to be the sister of the said Elizabeth Taylor, otherwise called Craufurd.) I remember hearing Mrs. Evans frequently state that her sister was married to said Mr. Craufurd, and I always believed it to be so. While living at St. Patrick's church, I frequently saw Thomas B. Craufurd and said Elizabeth, visiting at said John Evans's, apparently as man and wife. My impression is, that there was something in the circumstances of their marriage, or supposed marriage, which made it a subject of conversation at times, and my best recollection now is, (while I have no recollection of ever hearing their marriage questioned,) that I have heard it stated that their marriage was a clandestine one, and whether the reason was that Mr. Craufurd and his friends were Protestants and Elizabeth and her friends Catholics, or some other, I do not now remember.

4. In answer to the fourth interrogatory he saith: I remember having baptized at least one of the children of the said Elizabeth; there was a register of baptism kept in St. Patrick's church; I entered said baptism in said register said register was always in the possession and kept by the pastor of the church. In baptizing and christening children, it is required to state, legitimate or
23 lawful child of (naming the parents,) in the register; it is not usual, so far as I know or believe, to state in the register that the child is illegitimate, even when such is the fact.

5. In answer to the fifth interrogatory he saith: I know that a marriage register was kept at St. Patrick's church, in Washington city, during the time I was there as assistant pastor, and that such register had been kept before that time, and that while I was such assistant pastor the same register book was used that had been used before that time, but I cannot state the date of the commencement of that register, nor whether it embraced the years 1834 to 1835, or not. I have no recollection of having seen this register since I left St. Patrick's church, in 1841. I last saw the same at St. Patrick's church; it was there when I left, and was in the custody of Father Matthew, the pastor of the church; the same ought now to be in the custody of the present pastor of said church. I have an imperfect recollection of having seen at some time, in said register, and entry of the marriage between said Thomas B. Craufurd and Elizabeth Taylor, but in whose handwriting the entry was made, whether in the Reverend Mr. Fiziac's, Father Matthew's, or some other person, I do not remember. I have no recollection of any fact or circumstance which will raise any suspicion of the good faith of the entry, if such entry in fact existed.

6. In answer to the sixth and last interrogatory he saith: I do not now remember any other fact or circumstance material to the question, whether Thomas B. Craufurd and Elizabeth Taylor were or were not married.

JOHN P. DONELAN.

WILLIAM LATHROP, *Commissioner.*

Ex

24 And I further certify that I did not employ a clerk, but the answers of said witness to each interrogatories were carefully and truly reduced to writing by me, the undersigned, as hereintofore set forth; and there being no further evidence offered by either party, I closed the execution of said commission, and hereby return the same under my hand and seal; closed this 31st day of October, A. D. 1862.

To your honorable court.

WILLIAM LATHROP, *Commissioner.* [SEAL.]

But the defendant objected to the reading of the following part of said deposition:

John P. Dolenan's deposition.—Objections to his answer.

2d. interrogatory. I always understood and believed that the Reverend Mr. Fiziac resided with Father Matthew, as his assistant, for several years prior to my becoming such assistant.

His answer to the 3d interrogatory: I always understood and believed her to be the sister of the said Elizabeth Taylor, otherwise Craufurd. I remember hearing Mrs. Evans frequently state that her sister was married to Mr. Craufurd, and I always believed it to be so. My impression is, that there was something in the circumstances of their marriage, or supposed marriage, which made it a subject of conversation at times, and my best recollection is, while I have no recollection of ever hearing their marriage questioned, that I never heard it stated that their marriage was a clandestine one; and whether the reason was that Mr. Craufurd and his friends were Protestants, and Elizabeth and her friends were Catholics, or some other, I do not now remember.
25

To the 4th interrogatory: I ~~never saw~~ baptism in said register. entered said

To the fifth interrogatory: Have an imperfect recollection of having seen at some time, in said register, an entry of the marriage between the said Thomas B. Craufurd and Elizabeth Taylor, but in whose handwriting the entry was made, whether in the Reverend Mr. Fiziac's, Father Mathew's, or some other person, I do not remember. (I have no recollection of any fact or circumstance which would raise any suspicion of the good faith of the entry, if such entry in fact existed.) Excluded by court

And thereupon the plaintiff, in order to lay a foundation for reading said depositon, gave evidence by Mr. Ferguson, that he was acquainted with Elizabeth Taylor, and had known her for 22 or 24 years, and that he was acquainted with Sarah Evans, the wife of sexton of St. Satrick's church, who was the sister of the said Elizabeth Taylor; that the said Sarah has been dead for several years. And he then produced the Reverend Mr. Boyle, and gave in evidence (proved) by him, that he is a priest in orders in the Roman Catholic Church, and was assistant pastor of St. Patrick's church, in the city of Washington, and had been assistant pastor thereof since the year 1853, and that he had searched frequently for the marriage registers of said church, but had been unable to find any of a date earlier than the year 1840, and that it was the ~~entry~~ duty of a pastor of the Roman Catholic Church, made so by the *the* rights and usages of said church, to keep a register of all marriages celebrated in his church.
26

And thereupon the court ruled that the following parts of said deposition should not be read in evidence, as offered by the plaintiff, (Judge Giles ruling) to wit, all that part of the answer to the second interrogatory which relates to Father Fiziac; also all that part of his answer to the 3d interrogatory which is as follows: "I always understood and believed her to be the sister of the said Elizabeth Taylor, otherwise called Elizabeth Craufurd." Also the words "I always believed it to be so;" and all of said answer beginning from the words "and my impression is," &c. Also the last four lines of the answer to the 5th interrogatory;

Refer Buller's N. Pr. 247. Regr. [illegible] but that the remaining parts of said deposition were admissible in evidence, and the said remaining parts of said deposition were accordingly read to the jury; to which ruling of the court and every of them, and to the reading of the said evidence and every part thereof, the defendant excepted, and prayed the court to sign and seal this, his first bill of exceptions, which is accordingly done, this third day of November, in the year 1862.

WILLIAM F. GILES. [SEAL.]

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Circuit court U. S., district of Maryland.

GEORGE T. CRAUFURD and others, lessee,
vs. } Second exception.
27 RICHARD S. BLACKBURN.

After having read in evidence to the jury the evidence offered and admitted, as is more fully stated in the foregoing bill of exceptions, (which is to be taken as part of this bill of exceptions,) the plaintiff, further to maintain the issue joined on his part, again produced the said Mrs. Harriet Ferguson, and by her offered in evidence, that on or about the year 1843, and for some years before and after, her said husband was miller for Thomas B. Craufurd, and that she and her said husband resided at or near the said Craufurd's mill, and that on one occasion in or about the said year 1843, (the said Craufurd and witness being joking together on the subject of marriage,) he, the said Craufurd, told her that he was married to the said Elizabeth Taylor, and had been married to her for several years, and that after his brother, Dr. David Craufurd, who then resided with him, should leave him, he intended to bring his wife to Greenwood—that is, to his dwelling; and that at the time this declaration was made, the said Elizabeth Taylor, with her children, resided at Monterey, a place belonging to the said Thomas B. Craufurd, distant about one mile from Greenwood; and that after the making of the said declaration, in the year 1844, the said Elizabeth Taylor and her children moved to Greenwood; and that after her removal to Greenwood she acted as mistress of the house, and the said Thomas B. Craufurd and Elizabeth Taylor lived together as man and wife. That while the said Elizabeth Taylor resided at Monterey, she used to go forwards and backwards to and from Greenwood, and on such occasions, whilst at Greenwood she acted as mistress—that is, as she acted after the removal to Greenwood. That witness, while her husband and herself lived with the said Craufurd, used to purchase eggs, butter, milk, and other things of the said Craufurd, and that
28 the said Craufurd used to tell her to go to the said Elizabeth Taylor about such things, sometimes calling her Betsey, and sometimes Miss Betsey, and sometimes his wife; and that he used to do so, as well before as after he had told her that he was married to the said Elizabeth Taylor.

And thereupon the said plaintiff produced the said Elizabeth Taylor, and offered in evidence by her that her sexual intercourse with the said Craufurd began in or about the year 1828 or 1829, and that she then lived on Miss Magruder's place with her step-father Green, her mother and her brother; that said Craufurd continued to visit her and had intercourse there with her, for some time; that she removed thence with her mother and her brother to Monterey; that the house at Monterey was furnished by the said Craufurd, and she and her family were supported by him; that the said Craufurd continued to visit her at Monterey; that whilst residing here she visited Washington for the purpose of having her second child, Sarah, baptized; that her sister, Sarah Evans, was the wife of the sexton of St. Patrick's Church, a Roman Catholic church in said city, and belonged to that faith; she herself, if anything, was a Roman Catholic, but her mother and brother were Methodists. That after morning service, on the Sunday succeeding her arrival at Washington, her child was baptized at said church by a minister whom she did not then know; his name, as she was afterwards

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informed, was Father Fiziac; that said Father followed her from the church, and overtaking her, said to her, you must make that man marry you; your 29 soul will be in peril if you continue to live with him in sin. She at once resolved to live with the said Craufurd no longer unless he would marry, and she sent for him to come up to Washington to see her. He came on the next day, Monday. She told him that she would no longer live with him as she had done; she would not return to him unless he would agree to marry her; that said Craufurd said he would marry her, provided the marriage would be kept secret until the death of his brother, Dr. David Craufurd, and assigned as a reason, that if his brother should hear of the marriage he would certainly make a will and leave his estate to some one else; that she agreed to these terms, and on the next day the marriage was celebrated between them, by the said Father Fiziac, at said church, in the presence of the said Sarah Evans and her brother, Samuel Taylor, who are both now dead; that she remained some days longer at her sister Evans's, in Washington, and then returned to Monterey, where she remained; the said Craufurd visiting her as before the marriage, until about June, 1844, when she and her children removed to Greenwood, the residence of the said Craufurd; that she took charge of his household and acted in it as mistress; she usually sat at the head of his table; he usually called her Betsey; she does not recollect that he ever introduced her as his wife to any one; he never did, to her knowledge, disclose the fact of his marriage to any one; and she never mentioned it to any one until about three weeks after the death of Dr. David Craufurd, when she was addressed by William Hill, an attorney at law, and brother of the husband of one of her daughters, on the subject, and she disclosed to him to the marriage; that the female lessors of 30 the plaintiff, and George T. Craufurd, are her children by the said Thomas B. Craufurd, and were always acknowledged by him, and were treated with affection by him, and supported and educated by him.

And the said plaintiff then produced John F. Callan, of Washington city, who being sworn, exhibited a book in manuscript, and proved that the same was the official register of baptisms of St. Patrick's church aforesaid; and the plaintiff calling his attention to the following entry in said book, he proved that the same was in the handwriting of the said Father Fiziac, who was at the time of the date of said entry the assistant minister of said church. The plaintiff then offered to read the said entry to the jury, as evidence to fix the date of the alleged marriage, testified to by said Elizabeth Taylor, in connexion with the baptism of her second child, Sarah Jane. The defendant objected; but the court overruled the said objection, and allowed the said entry to be read to the jury, and it was read accordingly; to which overruling of his said objection, and to the reading of said entry to the jury, as aforesaid, the defendant excepted, and prayed the court to sign and seal this, his second bill of exceptions, which is accordingly done this third day of November, in the year 1862.

Entry
next page
[illegible]

WILLIAM F. GILES. [SEAL.]

31 CRAUFURD, lessee,
vs. } 3d exception.
BLACKBURN.

Ex. 3

After reading the evidence admitted, as stated in the foregoing bill of exceptions, which is by agreement also made part of this bill of exceptions, the plaintiff, to sustain the issues on his part, produced John F. Callan, a competent witness, and gave in evidence by him that he has been for many years a member of the congregation of St. Patrick's church in Washington city, and that by the ritual and usage of said church it was required that an official register of baptism be kept, and all baptisms entered therein; and a book in manuscript being exhibited to said witness, he identifies the same to be the baptismal register kept in said St. Patrick's church, in which he, upon examination, finds

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an entry of the baptism of one of his own children, and said witness being shown an entry in said book in the words and figures following, to wit:

"1837, July 30.—George Thomas, son of Thomas Craufurd and Elizabeth Taylor his wife, born 7th September, 1836.
Sponsors:
JOHN and SARAH EVANS"—

the witness states that he is well acquainted with the handwriting of the Reverend John P. Donelan, who was assistant pastor of said St. Patrick's church in the year 1837, and he recognizes the said entry so last shown to him to be the handwriting of said Donelan; and thereupon, the plaintiff offered to read in evidence to the jury the aforesaid entry of baptism of George T. Craufurd; but the defendant objected to the admissibility of said offered evidence for any purpose; and further objected, that if it were admissible at all, it could be read only as evidence of the fact of baptism, and of the 32 time thereof, and was not evidence of the relation supposed to exist between the said Thomas Craufurd and Elizabeth Taylor, it not being shown that the said Craufurd and Taylor were, or that either of them was, present on the occasion, or authorized said entry to be made, and especially as the said witness, Callan, had further proved that it was not usual for the parents to assist at the baptism of his or her child in the Roman Catholic churches; but the court overruled the said objection, and allowed the said entry to be read as evidence, as well of the fact of said baptism, and of the date thereof, as of the fact that the said George T. Craufurd was baptised as the lawful child of Thomas Craufurd and Elizabeth Taylor his wife. To which overruling of his said objections and each of them, and to the reading of said entry as evidence aforesaid, the said defendant excepted; and thereupon, this his bill of exceptions is signed, sealed, and enrolled, this third day of December, 1862.

Ex. 4 Craufurd's Lessee v Blackburn. 4th Excepn

WILLIAM F. GILES. [SEAL.]

After the delivery of the evidence detailed in the next preceding bill of exceptions, (which by agreement is made part of this bill of exceptions,) the plaintiff, further to maintain the issue on his part, proved by several witnesses various acts and declarations of Thomas B. Craufurd for many years before his death, all tending to prove that Elizabeth Taylor was his lawful wife, and the lessors of the plaintiff, his issue by her, recognized by him, and also proved that said Thomas B. Craufurd and said Elizabeth Taylor cohabited 33 together as man and wife at Greenwood, his family mansion, for several years previous to his death; and the plaintiff thereupon rested his case.

Whereupon the said defendant, to sustain the issue on his part joined, offered in evidence the following transcript from the records of the orphans' court of Prince George's county, Maryland, professing to read therefrom the verdict of the jury, and the order of the orphans' court therefrom, on certain issues sent from the said orphans' court of Prince George's county to the circuit court of said county for trial, and thence removed unto the circuit court for Charles county, and which were tried in the said last named court, at the May term, 1860, of said court; and also offered to prove that George T. Craufurd in the said transcript named, and George T. Craufurd, one of the lessors of the plaintiff, are one and the same person; and that Richard S. Blackburn, in said transcript named, and Richard S. Blackburn, the defendant to this action, are the same person; the said transcript being separately offered in evidence by the defendant—

professing

1stly, as an estoppel, on the question of marriage, against all the lessors of the plaintiff in this action;

2dly, as an estoppel against George T. Craufurd, one of the lessors of the plaintiff in this action; and

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3dly, as prima facie evidence to support the issue on the part of the defendant.

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37 MARYLAND, *Prince George's County, sct:*

At an orphans' court held at Upper Marlborough town, in and for Prince George's county, on the 24th day of January, in the year of our Lord one thousand eight hundred and sixty, and in the eighty-third year of the independence of the United States of America—

Were present: William B. Hill, C. S.; Basil F. Duckett, A. J.; William R. Barker, A. J.; John W. Webster, sheriff; William J. Jarboe, register—

There was among the proceedings of the same court the following, to wit:

In the orphans' court of Prince George's county.

RICHARD S. BLACKBURN
vs.
GEORGE T. CRAUFURD.

Cross-petition and answer filed.

GEORGE T. CRAUFURD
vs.
RICHARD S. BLACKBURN.

In the matter of the oral application of Richard S. Blackburn for grant of letters of administration upon the personal estate of David Craufurd, late of Prince George's county, deceased—

In the orphans' court for Prince George's county, at a special court, called for the 12th day of January, 1860, George T. Craufurd, of the full age of twenty-one years, resident of Prince George's county, a nephew of the whole
blood and next of kin of the said David Craufurd, entitled under the
38 law of the land to letters of administration on the personal estate of the
said David Craufurd, objects to the grant of letters of administration to the said Richard S. Blackburn, because your objectant is prepared to show, by undeniable and competent proof, that your objectant is the party legally entitled to the grant of letters of administration on the personal estate of the said David Craufurd, and suggests to your honors that a day may be fixed by the court for the hearing of the said applications and the taking of such testimony as either side may desire, and that the plenary proceedings may be directed in the usual form.

D. C. DIGGES,
S. H. BERRY,
EDWD. W. BELT,
W. J. HILL,
For Objectors.

Ordered, by the orphans' court for Prince George's county, this 12th day of January, 1860, upon the within oral application and the objection thereto, that the said Richard S. Blackburn and George F. Craufurd, respectively, file their petitions, in writing, for grant of letters in this case, and that they severally answer the said petitions upon oath or affirmation, as the case may be, and that plenary proceedings be had upon said petitions and answer.

WM. B. HILL,
WM. R. BARKER,
BASIL F. DUCKETT,
Judges of the Orphans' Court for P. G. County.

39 In the orphans' court for Prince George's county, January 17th, 1860.

RICHARD S. BLACKBURN
vs.
GEORGE F. CRAUFURD.

GEORGE T. CRAUFURD
vs.
RICHARD S. BLACKBURN.

The petition of Richard S. Blackburn for grant of letters of administration on the personal estate of David Craufurd, filed January 12th, 1860: George T. Craufurd's petition for *George T. Craufurd's petition for* letters of administration on the personal estate of David Craufurd, filed January 13th, 1860; continued to January 24th, 1860.

In the orphans' court for Prince George's county, January 24th, 1860.

RICHARD S. BLACKBURN
vs.
GEORGE T. CRAUFURD.

The petition of Richard S. Blackburn for grant of letters on the personal estate of David Craufurd, filed January 12th, 1860.

GEORGE T. CRAUFURD
vs.
RICHARD S. BLACKBURN.

The petition of George T. Craufurd for grant of letters of the personal estate of David Craufurd, filed January 13th, 1860.

R. S. Blackburn answer to George T. Craufurd, together with exhibit A, B, and C, filed January 17th, 1860.

George T. Craufurd answer *answer* to petition of R. S. Blackburn, filed January 17th, 1860.

To the honorable the justices of the orphans' court of Prince George's county, Maryland:

The petition of Richard S. Blackburn respectfully shows, that on or about the fifth day of December, eighteen hundred and fifty-nine, a certain Doctor David Craufurd, of this county and State, departed this life intestate, leaving a very
large real and personal property. That the said David Craufurd was
40 never married, and left neither widow, or child or children, or grand-
child, or father, or brother, or sister, or mother, so that his next of kin, of inheritable blood, are entitled to the said estate and to administration thereon according to the rules of law and the practice of this court. Your petitioner further shows, that a certain Nathaniel Craufurd, the father of the said David Craufurd, intermarried with one Sarah Blackburn, the sister of your petitioner's father, and had, as the issue of that marriage, the said David Craufurd, Nathaniel Craufurd, Jos. Bushrod Craufurd, Thomas B. Craufurd and Marian Craufurd, all of whom are dead, and died without ever having been married or leaving any issue of inheritable blood. Your petitioner, and certain other persons, male and female, living in the State of Virginia and the District of Columbia, stand in the relation of first cousin to the said David Craufurd, de-

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ceased, and as such are entitled, as the next of kin of inheritable blood, to the said estate, both real and personal, left by him; and your petitioner avers that he is the eldest male heir and distributee of said estate, and is therefore entitled to letters of administration thereon; he prays accordingly, most respectfully, that your honors may direct letters of administration on the personal estate of the said David Craufurd, deceased, to be granted unto him; and, in duty bound, he will ever pray, &c.

R. S. BLACKBURN.

The honorable the judges of the orphans' court of Prince George's county:

The answer of George T. Craufurd to the petition of Richard S. Blackburn, exhibited in said orphans' court against your respondent.

41 This respondent, answering under oath, admitted that Dr. David Craufurd, named and referred to in the petition of the said Richard S. Blackburn, departed this life at the time therein stated, intestate, and without issue, and was never married; that he left neither widow, or a child or children, or grandchild, or father, or brother, or sister, or mother. This respondent admits that the next of kin of the said David Craufurd are entitled to the estate left by him, which is very large and valuable, and consists both of real and personally. Your respondent admits that Nathaniel Craufurd, the father of the said David Craufurd, intermarried with one Sarah Blackburn, who was sister of the father of the petitioner, Richard S. Blackburn, and that the issue of that marriage is properly named and described in the petition; that Thomas B. Craufurd, one of the children or issue of the said Nathaniel Craufurd and the above-named Sarah Craufurd, his wife, departed this life in the year 1848, having previously intermarried with Elizabeth Taylor, and had, as the issue of that marriage, your petitioner and his three sisters, now living, who are the next of kin of the said David Craufurd. Your respondent admits that all the children of the said Nathaniel Craufurd are dead, but denies that all of the them died without ever having been married or having any issue of inheritable blood; but avers and insists, and is prepared to prove upon the trial of the proper issues, to be sent down to the circuit court for Prince George's county from this honorable court, that the said Thomas B. Craufurd, a child of the said Nathaniel Craufurd, and a brother of the full blood of the said David Craufurd, deceased, intermarried with Elizabeth Taylor, and that your repondent and his three sisters are the issue of said intermarriage, the next of kin to the said David Craufurd, deceased, and as such are entitled under the
42 law to the said estate.

Your respondent denies that the said Richard S. Blackburn is the next of kin to the said David Craufurd, and therefore he is not entitled to any portion of the said estate, or to letters of administration on the said personal estate, but insists that he, your respondent, is the oldest male heir and next of kin of the said David Craufurd, and as such is clearly entitled to letters of administration on the personal estate of the said David Craufurd, &c., &c.

GEO. T. CRAUFURD.

PRINCE GEORGE'S COUNTY, *to wit:*

On this 17th day of January, 1860, before the subscriber, a justice of the peace of the said county, personally appeared George T. Craufurd and made oath on the Holy Evangely of Almighty God that the facts contained in the aforegoing answer are true as stated, to the best of his knowledge and belief.

Sworn before C. R. BENSON, *J. P.*

To the honorable the judges of the orphans' court of Prince George's county:

The petition of George T. Craufurd, of said county, *of said county*, respectfully represents unto your honors, that David Craufurd, late of said county, deceased, departed this life on the fifth day of December, one thousand eight hundred and fifty-nine, intestate, leaving a very large real and personal estate; that the said David Craufurd never was married, and left neither widow, or a child or children, or grandchild, or father, or brother, or sister, or mother, so that his next of kin of inheritable blood are entitled to said estate and the administration thereon, according to the rule of law and the practice of this court.

43 Your petitioner further shows that a certain Thomas B. Craufurd, brother of the said *said* David Craufurd, departed this life some time in the year one thousand eight hundred and forty-eight, all their other brothers and sisters having previously thereto died intestate, and without issue, and never having married; that the said Thomas B. Craufurd intermarried with one Elizabeth Taylor, and had as the issue of that intermarriage the following children, to wit: Mary E. Craufurd, now the wife of John H. Sansbury; Sarah J. Craufurd, now the wife of Daniel R. Wall; your petitioner, George T. Craufurd, and Ann Victoria Craufurd, now the wife of Philip Hill, jr.; all of whom are residents of said county. That your petitioner and his said sisters are the nephew and nieces of the said David Craufurd, deceased, and as such are entitled as his next of kin to the said estate, both real and personal, left by the said David Craufurd, deceased; and your petitioner avers that he is the eldest male and distributee of said estate, and is therefore entitled to letters of administration thereon.

Your petitioner thereupon most respectfully prays your honors may direct letters of adminstration on the personal estate of said David Craufurd, deceased, to be granted unto him, and, as in duty bound, he will ever pray, &c.

D. C. DIGGES,
L. H. BERRY,
EDW. W. BELT,
WM. J. HILL,
For Petitioner.

44 In the orphans' court of Prince George's county.

RICHARD S. BLACKBURN
vs.
GEORGE T. CRAUFURD.

Cross-petition for letters of administration on the personal estate of David Craufurd, deceased.

GEORGE T. CRAUFURD
vs.
RICHARD S. BLACKURN.

The answer of Richard S. Blackburn to the petition of George T. Craufurd for letters of administration on the personal estate of David Craufurd, deceased, heretofore filed in the court.

To the honorable the justices of the orphans' court of Prince George's county, Maryland:

The respondent, who is one of the next of kin of the said David Craufurd, and the eldest male heir of inheritable blood to his estate, both real and personal, by way of answer to the petitioner of the said George T. Craufurd, respectfully states, that he admits that the said David Craufurd departed this life on or about the fifth day of December last, leaving a very large real and personal estate.

He also admits that the said David Craufurd was never married, and died without issue, leaving neither a widow, or a child, or children, or grandchild, or father, or brother, or sister, or mother, so that his next of kin of inheritable blood are entitled to his estate, and the administration thereon, according to the principles and rules of law in such cases.

This respondent, further answering, says that a certain Nathaniel Craufurd, the father of the said David Craufurd, intermarried with one Sarah Blackburn, the aunt of this respondent, and a sister of this respondent's father; that
45 they have both long since departed this life, leaving as the issue
and fruits of said marriage the said Dr. David Craufurd, Nathaniel Craufurd, jr., Bushrod Craufurd, Thomas B. Craufurd and Marian Craufurd; that the said Nathaniel Craufurd, jr., Bushrod Craufurd, Thomas B. Craufurd and Marion Craufurd were married, and each and all of them died without leaving any lawful children, or inheritable issue; so that the only persons now in existence, who are next of kin and lawful heirs of the said David Craufurd, are your respondents, a first cousin and eight or ten other persons, who are also first cousins, living now in the State of Virginia and District of Columbia, and elsewhere, all of whom, as the said next of kin, are entitled to the said estate, both real and personal; and your respondent, who is the eldest male heir, is entitled to letters of administration on the said personal estate; all of which said averments this respondent is ready to prove whenever required. Further answering, this respondent admits that the said Thomas B. Craufurd, the brother of the said David Craufurd, and the reputed father of the said George T. Craufurd, Mary E. Sansbury, Sarah Wall, and Anna V. Hill, mentioned in the said petition, departed this life some time in the month of March, in the year eighteen hundred and forty-eight; but he utterly and positively denies that the said Thomas B. Craufurd in his lifetime ever intermarried with the said Elizabeth Taylor the mother of the said petitioner and her other named children, but, on the contrary, this respondent avers that the said petitioner George T. Craufurd, and the other mentioned children, are illegitimate and the natural children of the said Elizabeth Taylor, born out of lawful wedlock with the said Thomas B. Craufurd, or any other person,
46 and, as such illegitimate and natural children, have no inheritable blood of
the said Thomas B. or David Craufurd, deceased, and are not entitled to any portion of the said David Craufurd's estate, or to administration thereon.

In confirmation of these facts this respondent states, that on the 22d day of July, in the year 1844, the said Thomas B. Craufurd executed his last will and testament, which was duly admitted to probate in the orphans' court of Prince George's county on the fourth day of April, 1848, shortly after the death of the said Thomas B. Craufurd, in which he devises and bequeaths all his real and personal estate to his aforesaid children, describing them as his natural children by the said Elizabeth Taylor, all of which will fully appear by reference to the said last will and testament, a correct and true copy of which is herewith filed, marked Exhibit A, and which this respondent prays may be taken and considered as a part of his answer. Further answering, this respondent says, that by the said last will and testament of the said Thomas B. Craufurd, a certain Thomas F. Bowie, of said county, was made and appointed executor and guardian to the aforesaid natural children of him the said Thomas B. Craufurd. That on the 15th April, 1848, letters testamentary were granted by the orphans' court of the said county to the said Thomas F. Bowie. That on the 17th of June, in the year 1856, the said Bowie passed his final account as executor, and on the 5th of January, 1857, a full and final distribution of the said estate was made, as directed by said will, among the said natural children of Thomas B. Craufurd, as may be fully seen by reference to the proceedings of the orphans' court aforesaid, and that during all this time they have
47 held their respective portions of said estate in the character and under
the description contained in the said will, and no pretence set up during all that time, either by the said Elizabeth Taylor or any one of the children, that

she was ever lawfully married to the said Thomas B. Craufurd, and this respondent avers that no such pretended marriage was ever set up or mentioned until after the death of the said Dr. David Craufurd, and in confirmation of this your respondent refers to the following exhibits, marked B & C, herewith filed, being true copies of sundry deeds now of record among the land records of Prince George's county, by and between the said Elizabeth Taylor and her children and others, in which said deeds the said Elizabeth Taylor is described as the natural mother, and the said children as the natural children, of the said Thomas B. Craufurd, all of which said exhibits this respondent prays may be taken and considered as a part of this answer.

This respondent insists, that after so long and repeated acquiescence by the said Elizabeth Taylor and the said George T. Craufurd in the true character of the said George's paternity, and in her true relation to the said Thomas B. Craufurd in his lifetime, it is now too late for either of them to question the illegitimacy of the said children of the said Elizabeth Taylor, and this respondent is advised that by their said conduct, acts and declarations, they are now estopped from setting up any such pretended marriage as the one set forth and relied on in the petition of the said George T. Craufurd.

48 This respondent having thus fully answered the said petition, prays that the same may be dismissed, and that letters of administration on the personal estate of David Craufurd, deceased, may be granted unto him, as the eldest male heir, being next of kin; and, as in duty bound, he will ever pray, &c., &c.

RICHARD S. BLACKBURN.

STATE OF MARYLAND,
Prince George's County, sct:

Be it remembered, that on this 17th day of January, 1860, personally appeared before me, the subscriber, one of the State's justices of the peace in and for said county, Dr. Richard S. Blackburn, the respondent in the foregoing answer, and made oath on the Holy Evangely of Almighty God that the matter and things set forth and contained in the foregoing answer are true to the best of his knowledge and belief.

Sworn before

C. R. BENSON, *J. P.*

Exhibit A.

In the name of God, amen. I, Thomas B. Craufurd, of Prince George's county, in the State of Maryland, being apprehensive of death, but of sound and disposing mind, memory and understanding, and being anxious, before I die, to settle and dispose of all my estate by last will and testament, do hereby make and publish this as my last will and testament.

In the first place, I desire all my just debts and funeral charges to be paid my executor hereinafter named, and after their payments I will and devise as follows:

49 I will, devise, and give unto George Thomas Craufurd, my natural son by Elizabeth Taylor, now about eight years old, the one-half of my entire landed estate, to be laid off to him so as to include the dwelling-house, all the outhouses attached thereto, at Greenwood, wherein I now reside, to him the said George T. Craufurd, his heirs and assigns, in fee simple forever.

Also I will, devise, and give the other moiety or half of all my landed estate to Mary Elizabeth Craufurd, Sarah Jane Craufurd, and Anna Victoria Craufurd, my natural children and daughters by the said Elizabeth Taylor, to be equally divided between them, share and share alike, to them, their heirs and assigns forever, as tenants in common.

I give and bequeath unto the said George Thomas Craufurd, my aforesaid son, the one-half of all my negroes and other personal estate of every description whatever, including debts due to me, and every other description of personal property whatever, to him the said George Thomas Craufurd, his executors, administrators and assigns.

The other half of my negroes and personal estate of every description, as aforesaid whatever, I give and bequeath unto the aforesaid Mary Elizabeth Craufurd, Sarah Jane Craufurd, and Anna Victoria Craufurd, my aforesaid natural children and daughters by the said Elizabeth Taylor, to be equally divided among them, share and share alike.

And whereas, in all probability, the said Elizabeth Taylor may be now pregnant with child by me, I further will and devise that, in case such child shall be born after my death, that then and in that event said child shall have an equal share with my aforesaid daughters in all that half of my real and personal estate which I have hereinbefore devised and bequeathed to them.

I further will and devise, and do hereby direct, that Elizabeth Taylor, the
mother of my aforesaid children, shall live and have her home at Green-
50 wood, with the aforesaid children, so long as she shall live single and
unmarried.

And lastly, I do hereby constitute and appoint my friend Thomas F. Bowie to be sole executor of this my last will and testament, and guardian to my aforesaid children, for and until they shall respectively arrive to full age.

In testimony whereof, I have hereunto set my sign and mark, (not being able to write my name in consequence of a *paryletic* attack in my right arm, by which I have lost the use of it,) and affix my seal, this twenty-second day of July, in the year of our Lord one thousand eight hundred and forty-four.

his
THOS. + B. CRAWFORD. [SEAL.]
mark.

Signed, sealed, published, and declared by Thomas B. Crawford, as and for his last will and testament, in our presence; and at his request in his presence, and the presence of each other, we have subscribed our names as witnesses thereto.

BENJ. L. GANTT.
W. BOWIE BROOKE.
G. B. STONE.

PRINCE GEORGE'S COUNTY, *sct., April* 4, 1848:

Then came Benj. L. Gantt and George B. Stone, two of the subscribing witnesses to the within will of Thomas B. Craufurd, late of Prince George's county, deceased, and made oath on the Holy Evangely of Almighty God that they did see the testator herein named sign and seal this will and heard him publish, pronounce, and declare the same to be his last will and testament; that at the time of his so doing he was, to the best of their apprehensions, of sound and dis-
posing mind, memory, and understanding; and that they, together with
51 W. Bowie Brooke, the other subscribing witness, respectfully subscribed
their names as witnesses to this will, in the presence of the testator, at
his request, and in the presence of each other.

Sworn before

JAMES HARPER,
Reg'r of Wills of Prince George's County.

PRINCE GEORGE'S COUNTY, *sct:*

I, William A. Jarboe, register of wills for the county aforesaid, in the State of Maryland, do hereby certify that the aforegoing is a true copy of the last will and testament of Thomas B. Crawford, late of said county, deceased, duly proven according to law, and now upon record remaining in my office.

{ Orphans' court for Prince [SEAL.] George's county, Maryland. } In testimony whereof, I hereunto set my hand, and affix the seal of the orphans' court for Prince George's county, this 12th day of January, 1860.

WILLIAM A. JARBOE,
Reg. of Wills for P. G. County.

Exhibit B.

Know all men by these presents that I, George T. Craufurd, of Prince George's county and State of Maryland, for and in consideration of the natural love and affection which I have towards my mother, Elizabeth Taylor, and for the purpose of securing her better maintenance and support, have given, granted, transferred, assigned and convey'd, and do by these presents give, grant, assign and convey unto the said Elizabeth Taylor, her executors, administrators and assigns, negro girl Amelia, aged about sixteen years, a slave for life; and I hereby warrant and defend the said negro to be a slave for life, and the full and entire property of the grantee herein named, according to the effect and true intent
52 thereof. In witness whereof, I have hereto set my hand and affix'd my seal this 12th day of November, one thousand eight hundred and fifty-six.

GEO. T. CRAUFURD. [SEAL.]

Signed, sealed, and deliver'd in the presence of—the words Amelia and November being first interlined—

D. C. DIGGES.
CEPHUS R. BENSON.

STATE OF MARYLAND,
Prince George's County, sct:

Personally appeared, on the 12th day of November, 1856, before the undersigned justice of the peace of the said State in and for the county aforesaid, George T. Craufurd, who is personally known to me to be the party grantor to the above deed of gift, and acknowledged the same to be his act and deed, for the purposes herein mentioned.

C. R. BENSON, *J. P.*

Enrolled the 13th day of November, 1856.

STATE OF MARYLAND,
Prince George's County, sct:

I hereby certify that the aforegoing is truly taken and copied from liber C. S. M. No. 1, fol. 410 and 411, one of the land record books of said county.

{ Circuit court of [SEAL.] Prince George county. } In testimony whereof, I have hereunto subscribed my name, and affix'd the seal of the circuit court for Prince George's county, this thirteenth day of January, anno Domini one thousand eight hundred and sixty.

CHARLES S. MIDDLETON,
Clerk of the Circuit Court for P. G. County.

53 *Exhibit C.*

Know all men by these presents that I, Daniel R. Wall, of Prince George's county, in the State of Maryland, for and in consideration of the sum of ten dollars, current money, to me in hand paid by Elizabeth Taylor, of the county and State aforesaid, at and before the sealing and delivery of these presents, the receipt whereof I, the said Daniel R. Wall, do hereby acknowledge, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said Elizabeth Taylor, her executors, administrators, and assigns, the following property hereinafter mentioned; that is to say, one wagon and harness, one large bay horse about nine years old, one sorrel horse about twelve years old, all and singular which said property are now remaining, standing and being in my possession.

To have and to hold all and singular the said property, and other the premises above bargained and sold or mentioned, and intended so to be, to the said Elizabeth Taylor, her executors, administrators and assigns forever. And I, the said Daniel R. Wall, for myself, my heirs, executors and administrators, all and singular the said property and premises unto the said Elizabeth Taylor, her executors, administrators and assigns, against me, the said Daniel R. Wall, my executors and administrators, and against all and every other person or persons whatsoever, shall and will warrant and forever defend by these presents, of all and singular, which said property and other the premises I, the said Daniel R. Wall, have put the said Elizabeth Taylor in full possession, by delivering to her, the said Elizabeth Taylor, one sorrel horse, at the sealing and delivery of these presents, in the name of the whole premises hereby bargained and sold or mentioned, and intended so to be, unto the said Elizabeth Taylor aforesaid.

In witness whereof, I have hereunto set my hand and affixed my seal this 20th day of March, anno Domini 1857.

D. R. WALL. [SEAL.]

54 Signed, sealed and delivered in the presence of—
THOMAS R. BROOKS.

STATE OF MARYLAND, *Prince George's County, sct:*

Be it remembered, and it is hereby certified, that on this 20th day of March, eighteen hundred and fifty-seven, before the subscriber, one of the justices of the peace of the county and State aforesaid, personally appeared Daniel R. Wall, he being known to me to be the person who is named and described as and professing to be a party to the aforegoing bill of sale or instrument of writing, and doth acknowledge the said instrument of writing to be his act and deed; and also, at the same time and place, came before me, the subscriber, a justice as aforesaid, Elizabeth Taylor, and made oath on the Holy Evangely of Almighty God that the aforegoing bill of sale is just and bona fide, and the matter and things therein set forth is true and bona fide set forth.

Given under my hand and seal the day and year aforesaid.

THOMAS R. BROOKS, *J. P.* [SEAL.]

Enrolled 21st day of March, 1857.

STATE OF MARYLAND, *Prince George's County, sct:*

{ Circuit court for Prince George's county, Maryland. } I hereby certify that the aforegoing bill of sale is truly taken and copied from liber C. L. M. No. 1, folio 521, &c., one of the land record books of said county.

In testimony whereof, I have hereunto set my name and affixed the [SEAL.] seal of the circuit court for Prince George's county, this 13th day of January, anno Domini one thousand eight hundred and sixty.

C. S. MIDDLETON,
Clerk of the Circuit Court for Prince George's County.

55 The State of Maryland to the sheriff of Prince George's county, greeting:

You are hereby commanded to summons Charles S. Middleton, clerk of the circuit court for Prince George's county, and Henry Brooks, his deputy clerk, that all excuses and delays being laid aside, they be and appear before the justices of the orphans' court, at a session of the said orphans' court of Prince George's county, to be held at Upper Marlborough, on the 17th day of January, 1860, and that they then and there bring with them, and produce at the time and place aforesaid, a deed of gift bearing date on the 12th day of November, 1856, executed by one George T. Craufurd to a certain Elizabeth Taylor, and also they bring with them a certain other deed of gift or bill of sale from Daniel R. Wall to a certain Elizabeth Taylor, bearing date on the 20th March, 1857, and then and there to testify and show all and singular those things which they know of the said deeds of gifts and bills of sales a conveyance do impart of one concerning a certain matter of controversy in the said orphans' court depending between Richard L. Blackburn and George T. Craufurd, and as touching the right of administration upon the personal estate of Daniel Craufurd, of Prince George's county, deceased, now pending between the said Richard L. Blackburn and the said George T. Craufurd, on the part of the said Richard L. Blackburn. Hereof fail not at your peril, and have you then and there this writ.

Orphans' court for
[SEAL.]
Prince George's county.

Witness William B. Hill, esquire, chief judge of the orphans' court for Prince George's county, this 17th day of January, 1860. Issued 17th day of January, 1860.

Test: WILLIAM A. JARBOE,
Reg. of Wills for P. G. County.

56 The aforegoing summons returned, endorsed thereon: Summon'd Brooke, not sum'd Middleton—D. R. Dyer, sheriff.

Test: WM. A. JARBOE,
Register of Wills for P. G. County.

The State of Maryland to the sheriff of Prince George's county, greeting:

You are hereby commanded to summon Charles S. Middleton, clerk of the circuit court for Prince George's county, and Benjamin H. Mullikin, his deputy clerk, that all excuses and delays being laid aside, they be and appear before the justices of the orphans' court, at a session of the said orphans' court of Prince George's county, to be held at the town of Upper Marlborough, on the 24th day of January, 1860, and that they then and there bring with them, and produce at the time and place aforesaid, a deed of gift bearing date on the 12th day of November, 1856, executed by one George T. Craufurd to a certain Elizabeth Taylor, and also they bring with them a certain other deed of gift, a bill of sale from Daniel R. Wall to a certain Elizabeth Taylor, bearing date 20th March, 1857, and then and there to testify and show all and singular those things which they know of the said deeds of gift and bills of sale a conveyance do impart of one concerning a matter of controversy in the said orphans' court pending between Richard S. Blackburn and George T. Craufurd, and as touching the right of administration upon the personal estate of the said David Craufurd, of Prince George's county, deceased, now pending between the said Richard S. Blackburn and
57 the said George T. Craufurd, on the part of the said Richard S. Blackburn. Hereof fail not at your peril, and have you then and there this writ.

Orphans' court for Prince George county, Maryland.

Witness Wm. B. Hill, esquire, chief judge of the orphans' court for Prince George's county, this 17th day of January, 1860.

Test: WM. A. JARBOE,
Register of Wills for Prince George's County.

The aforegoing summons returned, endorsed thereon: Cōpé.—D. R. Dyer, sheriff.

STATE OF MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's county, greeting:

Orphans' court for Prince George's county, Maryland.

You are hereby commanded to summons James W. Lowe, so that all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's county, to be held at Upper Marlborough town, in said county, on Tuesday, 24th day of January, 1860, to testify for Richard S. Blackburn, before said court, in the matter of controversy in the said court touching the right of administration on the personal estate of David Craufurd, late of said county, deceased. Hereof fail not at your peril, and have you then and there this writ.

Witness Wm. B. Hill, esquire, chief judge of the orphans' court for Prince George's county, this 17th day of January, 1860.

Issued 17th day of January, 1860.

Test: WM. A. JARBOE,
Register of Wills for Prince George's County.

The aforegoing summons returned, endorsed thereon: Summoned.—D. R. Dyer, sheriff.

Test: WM. A. JARBOE, *Reg.*

STATE OF MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's county, greeting:

58 { Orphans' court for Prince George's county, Maryland. } You are hereby commanded to summon Dr. John H. Boyle, so that all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's county, to be held at Upper Marlborough town, in said county, on Tuesday, 24th day of January, 1860, to testify for Richard S. Blackburn, before said court, in the matter of controversy between Richard S. Blackburn and George T. Craufurd touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said orphans' court. Hereof fail not at your peril, and have you then and there this writ.

Witness Wm. B. Hill, esquire, chief judge of the orphans' court for Prince George's county, the 17th day of January, 1860.

Issued the 17th January, 1860.

Test: WM. A. JARBOE, *Reg.*

The aforegoing summons returned, endorsed thereon: Summoned.—D. R. Dyer, sheriff.

Test: WM. A. JARBOE, *Reg.*

MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's county, greeting:

{ Orphans' court for Prince George's county, Maryland. } You are hereby commanded to summon Henry J. Ball, so that all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's county, to be held at Upper Marlborough town, in said county, on the 24th day of January, 1860, to testify for Richard S. Blackburn, before said court, on the matter of controversy between Richard S. Blackburn and George F. Craufurd touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said orphans' court. Hereof
59 fail not at your peril, and have you then and there this writ.

Witness Wm. B. Hill, esquire, chief justice of the orphans' court for Prince George's county, the 17th day of January, 1860.

Issued the 17th day of January, 1860.

Test: WM. A. JARBOE, *Reg.*

The aforegoing summons returned, endorsed thereon: Summoned.—D. R. Dyer, sheriff.

Test: WM. A. JARBOE, *Reg.*

MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's county, greeting:

{ Orphans' court for Prince George's county, Maryland. } You are hereby commanded to summon William Duvall, so that all delays be set aside, to be and appear before the justices of the orphans' court for Prince George's county, to be held at Upper Marlborough town, in said county, on the 24th day of January, 1860, to testify for Richard S. Blackburn, before said court, in the matter of controversy between Richard S. Blackburn and George T. Craufurd touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before the said orphans' court. Hereof fail not at your peril, and have you then and there this writ.

Witness Wm. B. Hill, chief judge of the orphans' court of Prince George's county, the 17th day of January, 1860.

Issued the 17th day of January, 1860.

Test: WM. A. JARBOE, *Reg.*

The aforegoing summons returned, endorsed thereon: Summoned.—D. R. Dyer, sheriff.

Test: WM. A. JARBOE, *Reg.*

60 MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's county, greeting:

{ Orphans' court for Prince George's county, Maryland. } You are hereby commanded to summon Thomas Talbert, so that all delays be set aside, to be and appear before the judges of the orphans' court for Prince George's county, to be held at Upper Marlborough town, in said county, on the 24th day of January, 1860, to testify for Richard S. Blackburn, before the said court, in the matter of controversy between Richard S. Blackburn and George T. Craufurd touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, and now pending in said orphans' court. Hereof fail not at your peril, and have you then and there this writ.

Witness Wm. B. Hill, esquire, chief judge of the orphans' court for Prince George's county, the 17th day January, 1860.

Issued 17th day of January, 1860.

Test: WILLIAM A. JARBOE, *Reg.*

The aforegoing summons returned, endorsed thereon: Summoned.—D. R. Dyer, sheriff.

Test: WILLIAM A. JARBOE, *Reg.*

MARYLAND, *sct:*

State of Maryland to the sheriff of Prince George's county, greeting:

{ Orphans' court for Prince George's county, Maryland, } You are hereby commanded to summon J. J. Jarboe, so that all delays be set aside, he be and appear before the judges of the orphan's court of Prince George's county, to be held at Upper Marlborough town, in said county, on the 24th day of January, 1860, to testify for Richard S. Blackburn, before the said court, in the matter
of controversy between Richard S. Blackburn and George T. Craufurd
61 touching the right of administration on the personal estate of David
Craufurd, late of said county, deceased, now pending before said court.
Hereof fail not at your peril, and have you then and there this writ.

Witness Wm. B. Hill, esquire, chief judge of the orphans' court for Prince George's county, this 17th day of January, 1860.

Issued 17 January, 1860.

Test: WM. A. JARBOE, *Reg.*

The above summons returned, endorsed thereon: Summoned.—D. R. Dyer, sheriff.

Test: WM. A. JARBOE, *Reg.*

State of Maryland to the sheriff of Prince George's county, greeting:

{ Orphans' court for Prince George's county, Maryland. } You are hereby commanded to summon Richard Hopkins, so that all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's county, to be held at Upper Marlborough town, in said county, on the 24th day of January, 1860, to testify for Richard S. Blackburn, before said court, in the matter of controversy between Richard S. Blackburn and George T. Craufurd touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said court. Hereof fail not at your peril, and have you then and there this writ.

Witness Wm. B. Hill, chief judge of the orphans' court for Prince George's county, the 17 day of January, 1860.

Issued 17 January, 1860.

Test: WM. A. JARBOE, *Reg.*

62 The above summons returned, endorsed thereon: Summoned.—D. R. Dyer, sheriff.

Test: WM. A. JARBOE, *Reg.*

MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's county, greeting:

{ Orphans' court for Prince George's county, Maryland. } You are hereby commanded to to summon J. J. Jarboe, so that all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's county, to be held at Upper Marlborough town, in said county, on the 24th day of January, 1860, to testify for George T. Craufurd, before said court, in the matter of controversy between George T. Craufurd and Richard S. Blackburn touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said orphans' court. Hereof fail not at your peril, and have you then and there this writ.

Witness Wm. B. Hill, esquire, chief judge of the orphans' court for Prince George's county, this 17th day of January, 1860.

Issued 17th day of January, 1860.

Test: WM. A. JARBOE, *Reg.*

The above summons returned, endorsed thereon: Summond.—D. R. Dyer, sheriff.

Test: WM. A. JARBOE, *Reg.*

MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's county, greeting:

{ Orphans' court for Prince George's county, Maryland. } You are hereby commanded to summon Harriet Ferguson, so that all delays be set aside, she be and appear before the justices of the orphans' court for Prince George's county,
63 to be held at Upper Marlborough town, in said county, on the 24th day of January, 1860, to testify for George T. Craufurd, before the said court, in the matter of controversy between George T. Craufurd and the said Richard S. Blackburn touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said court. Hereof fail not at your peril, and have you then and there this writ.

Witness Wm. B. Hill, esquire, chief justice of the orphans' court for Prince George's county, the 17th day of January, 1860.

Issued January 17th, 1860.

Test: WM. A. JARBOE, *Reg.*

The above summons returned, endorsed thereon: Summon'd.—D. R. Dyer, sheriff.

Test: WM. A. JARBOE, *Reg.*

MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's county, greeting:

{ Orphans' court for Prince George's county, Maryland. } You are hereby commanded to summon James W. Lowe, so that all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's county, to be held at Upper Marlborough town, in the said county, on the 24th day of January, 1860, to testify for George T. Craufurd, before said court, in the matter of controversy between George T. Craufurd and Richard S. Blackburn touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said orphans' court. Hereof fail not at your peril, and have you then and there this writ.

64 Witness Wm. B. Hill, esquire, chief judge of the orphans' court for Prince George's county, this 17th day of January, 1860.

Issued 17th day of January, 1860.

Test: WM. A. JARBOE, *Reg.*

The above summons returned, endorsed thereon: Summoned.—D. R. Dyer, sheriff.

Test: WM. A. JARBOE, *Reg.*

MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's county, greeting:

{ Orphans' court for Prince George's county, Maryland. } You are hereby commanded to summons James L. Brashears, so that all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's county, to be held at Upper Marlborough town, in said county, on the 24th day of January, 1860, to testify for George T. Craufurd, before said court, in the matter of controversy between George T. Craufurd and Richard S. Blackburn touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said court. Hereof fail not at your peril, and have you then and there this writ.

Witness Wm. B. Hill, esquire, chief judge of the orphans' court for Prince George's county, the 17th day of January, 1860.

Issued the 17th day of January, 1860.

Test: WM. A. JARBOE, *Reg.*

The above summons returned, endorsed thereon: Summon'd.—D. R. Dyer, sheriff.

Test: WM. A. JARBOE, *Reg.*

65 MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's county, greeting:

{ Orphans' court for Prince George's county, Maryland. } You are hereby commanded to summon William H. Wilson, so that all delays be set aside, to be and appear before the justices of the orphans' court for Prince George's county, to be held at Upper Marlborough town, in said county, on the 24th day of January,

Ex 4

1860, to testify before said court for George T. Craufurd in the matter of controversy between George T. Craufurd and Richard S. Blackburn touching the right of administration on the personal estate of David Crawford, late of said county, deceased. Hereof fail not at your peril, and have you then and there this writ.

Witness Wm. B. Hill, esquire, chief judge of the orphans' court for Prince George's county, the 17th day of January, 1860.

Issued the 17th day of January, 1860.

Test: WM. A. JARBOE, *Reg.*

The above summons returned, endorsed thereon: Summoned.—D. R. Dyer, sheriff.

Test: WM. A. JARBOE, *Reg.*

In the orphans' court of Prince George's county.

RICHARD S. BLACKBURN
vs.
GEORGE T. CRAUFURD.

Cross petitions and answers heretofore filed.

GEORGE T. CRAUFURD
vs.
RICHARD S. BLACKBURN.

66 *Supplemental petition of George T. Craufurd praying for issues to be sent to the circuit court for Prince George's county, filed in the said orphans' court on the 24th day of January,* 1860.

To the honorable the judges of the orphans' court for Prince George's county:

The supplemental petition of George T. Craufurd respectfully showeth that he is entitled, and hereby requires, that issues be framed by your honorable court touching the matter in controversy between your aforesaid petitioner and the said Richard S. Blackburn, and he submits to your honorable court that the following issues be adopted by your honorable court and transmitted to the circuit court for Prince George's county for trial, according to the act of assembly in such case made and provided, viz:

First. Whether your petitioner, George T. Craufurd, is one of the next of kin to the said David Craufurd on the part of the father of the said David Crawford.

Second. Whether there is any male other than your petitioner, George T. Craufurd, of the next of kin to the said David Craufurd on the part of the father of the said David Craufurd; and your petitioner will ever pray, &c.

SAM'L H. BERRY,
D. C. DEGGES,
EDWARD W. BELT,
WM. J. HILL,
Attorneys for Petitioner.

In the orphans' court for Prince George's county, January 24, 1860.

67 Upon the hearing of the supplemental petition, aforegoing, of George T. Craufurd, requiring issues to be framed touching the matter in controversy between the said George T. Craufurd and the said Richard S. Blackburn, it is ordered by the orphans' court of Prince George's county, this 24th day of January, 1860, that the aforegoing two issues asked for by the

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petitioner in his aforesaid supplemental petition, and the additional issues offered by the said Richard S. Blackburn as the third issue, to wit: Third. Whether the said Thomas B. Craufurd was ever lawfully married to the said Elizabeth Taylor, either before or after the birth of the said George T. Craufurd, be transmitted to the circuit court for Prince George's county for trial, according to the act of assembly in such case made and provided.

WILLIAM B. HILL,
BASIL F. DUCKETT,
WM. B. BARKER,
Judges of the Orphans' Court for Prince George's County, Md.

Which is accordingly done.

And now here, on the 19th day of March, in the year 1861, the clerk of the court of appeals filed in the office of the register of wills of Prince George's county a certain transcript of the proceedings of the said court had upon the matter of said issues, which transcript is as follows:

Court of appeals of Md., December term, 1860. Justice Bartol delivered the opinion of this court.

GEORGE T. CRAUFURD
vs.
RICHARD S. BLACKBURN.

Doctor David Craufurd, late of Prince George's county, died about the fifth day of December, 1859, intestate and unmarried, leaving neither widow,
68 nor child, nor any descendants, father, mother, brother, or father. The appellant applied to the orphans' court for letters of administration on his estate, claiming to be the legitimate son of Thomas B. Craufurd, deceased, who was a brother of Doctor David Craufurd.

This application was resisted by the appellee upon the ground that Thomas B. Craufurd never was lawfully married to the mother of the appellant, and that the appellee being first cousin to the decedent is next of kin, and entitled to letters of administration on his estate. At the instance of the parties these issues were framed by the orphans' court and sent to the circuit court of that county for trial, and the cause was afterwards removed to the circuit court for Charles county. The issues were as follows:

1st. Whether your petitioner, George T. Craufurd, is one of the next of kin to the said David Craufurd on the part of the father of said David Craufurd.

2. Whether there is any male other than your petitioner, George T. Craufurd, of the next of kin to the said David Craufurd.

3. Whether the said Thomas B. Craufurd was ever lawfully married to the said Elizabeth Taylor before or after the birth of the said George T. Craufurd.

The verdict of the jury upon all the issues was against the appellant, who reserved two exceptions at the trial, which are presented for our decision on this appeal.

A great deal of testimony was produced, which it is unnecessary for
69 us to notice. It was properly submitted to the jury and passed upon by them.

The maiden name of the mother of the appellant was Elizabeth or Betsy Taylor. To prove that she was lawfully married to Thomas B. Craufurd, the appellant offered, with other evidence, the declarations of Thomas B. Craufurd, made on several occasions, to the effect that she was his wife, and also called his mother to the stand, who testified that she and Thomas B. Craufurd were married by a Catholic priest, in the city of Washington, in 1835. To rebut this evidence the appellee offered the declarations of Thomas B. Craufurd, made in the year 1837, and afterwards, that he was not married to Betsy Taylor, to which the appellant objected; but the circuit court decided the evidence to be admissible, and the propriety of this ruling forms the subject of first exception.

By the ordinary rule of evidence the declarations of persons not parties to the cause are excluded on the ground that they are mere hearsay; but it is a well-recognized exception to this rule that, in matters of pedigree, the declarations of deceased members of the family are admitted.—Cope's adm's *vs.* Pearce, 7 Gill, 247; 4 G. & J., 416.

The term pedigree embraces not only descent and relationship, but also the facts of birth, marriage, and death, and the time when these events happen.—7 Gill, 264.

This exception to the general rule had its origin in the necessity of the case. "From the necessity of the thing," said Lord Mansfield, 4 Camp., 415, "the hearsay of the family as to the marriage, birth, and the like, are admitted." This language is cited, 7 Gill, 264.

70 But it is objected that although such declarations to prove pedigree are ordinarily admissible, yet they ought to have been excluded in this case because the necessity did not exist, there being a party to the alleged marriage living, and competent to testify, and because it was inadmissible upon the principle that the best evidence of which the nature of the thing is capable must be given. This objection arises from a misapprehension of rule. Such declarations are not held to be admissible, or inadmissible, according to the necessity of the particular case, but they are admitted as primary evidence on such subjects by the established rule of law, which, though said to have had its origin in necessity, is universal in its application. Nor do such declarations stand upon the footing of secondary evidence, to be excluded where a witness can be had who speaks upon the subject from his own knowledge. "Hearsay evidence is, of course, inadmissible if the person making the declarations is alive and can be called; but the declaration of a deceased mother as to the time of the birth of her son are admissible, though the father is living and not called."—Hubback on the Evidence of Succession, 668, (48 Law Lib.)

In this case the testimony of the appellant's mother was properly admitted. Its weight was exclusively a question for the jury; but it cannot be said, as matter of law, to have conclusively established the marriage, so as to exclude other contradictory and rebutting evidence, which was legally compe-
71 tent and admissible, for the purpose of disproving her statement. In
Hubback, 243, (47 Law Lib.,) it is: "The proof of marriage by the register, or by the testimony of witnesses, is not, in questions of legitimacy, considered the only best evidence within the rule which requires such evidence to be produced, or its production accounted for. Notwithstanding the existence of this evidence, marriage may be proved by reputation and declarations, and presumed from circumstances."

This language will be found to be sustained by the authorities, which warrant us in saying that the same principle applies where the declarations are adduced for the purpose of disproving the alleged marriage.

It has been contended, upon the part of the appellant, that this evidence ought not to have been admitted, because it tended to bastardize the issue; and neither the personal testimony of the parents, nor their declarations, are admissible for that purpose.

In Goodwright *vs.* Moss., 2 Comp., 594, Lord Mansfield said: It is a rule founded in decency, morality, and policy, that they (the father and mother) shall not be permitted to say, after marriage, that they have had no connexion, and therefore that the offspring is spurious. In that case, the question was as to the time of the birth of the child, and the declarations of the deceased parent were admitted to prove that he was born before marriage. The rule just cited was there held to be inapplicable. We consider it alike inapplicable to the case before us.

4

The distinction which we deduce from all the authorities is this: If
72 marriage be proved or admitted, declarations of the parents will not be admitted to defeat the consequences of marriage, as that the children are bastards; but when the question is marriage *vel non,* "the declarations of the parties themselves of deceased, that they were or were not married, provided they were made *ante litem motam,* are admissible evidence of the fact declared." See Hubback, 244, and authorities there cited. 1 Phil. Evidence, 251, note 1, ed. of 1859.

One other rule has been invoked by the appellant in support of this objection to this evidence. It is said that, in order to make Thomas B. Craufurd's declarations evidence, it must first be proved aliunde that he was a deceased relation of the appellant, which is not shown by proving that he was the putative father only. And in support of this, the counsel cited Hubback, 657, where it is said: "The rule is now well established that hearsay evidence on matters of pedigree, to be admissible, must proceed from some member of the family to which it relates; and the declarations of an illegitimate member of the family have been held inadmissible." But the same author, on page 660, says: "It is sufficient that the declarant be connected by extrinsic evidence with one branch of the family touching which the declaration is tendered. To require proof of his connexion with both branches would be to render the declaration itself superfluous, as the very fact in proof of which it is used would then be established." See Monkton *vs.* Att'y General, 2 Russ. & Mylew, 147; (6 Eng. Com. Ch. R.,
73 436.) According to the rule laid down by Lord Brougham in the case last cited, it is sufficient, in order to admit the declarations of Thomas B. Craufurd, to prove his relationship with the decedent, David Craufurd, the question here being whether the appellant is next of kin to David Craufurd. But without relying on this point, upon the authority of the case of Monkton *vs.* The Attorney General, which was wholly unlike the present, we are of opinion that the objection of the appellant, now under consideration, will not bear the test of examination. The appellant, after offering evidence that he was the reputed son of Thomas B. Craufurd, to prove his legitimacy offers the declarations of Thomas B. Craufurd, to establish his marriage with Elizabeth Taylor, the mother of the appellant. The appellee, to rebut this, offers the declarations of Thomas B. Craufurd to the effect that he never was married to Elizabeth Taylor, and that the appellant, though his son, is not legitimate. Then the objection is made that these last declarations are inadmissible, unless the foundation is first laid by proving that the appellant is legitimate, for without that it is said the declarant is not legally related to the appellant. Such a proposition involves a contradiction in itself, and needs no argument or authority to refute it. As we have said before, all the authorities establish that where the question is *marriage vel non,* the declarations of the parties to the alleged marriage of deceased are admissible, either to prove or disprove it.

It follows that, in our opinion, the ruling of the circuit court on the first exception ought to be affirmed; and for the same reasons we affirm on the
74 second exception, which presents substantially the same question. The last will and testament of Thomas B. Craufurd was properly admitted in evidence as a declaration made by him in a most deliberate and solemn form.

Judgment affirmed.

True copy.—Test: WM. A. SPENCER,
Clerk Court of Appeals of Md.

MARYLAND, *sct:*

At a court of appeals of the State of Maryland, begun and held for the said State, at the city of Annapolis, on the first Monday in December, being the third day of December, in the year of our Lord one thousand eight hundred and sixty, and in the year of the independence of the United States the eighty-fifth.

Ex

Present: The Hon. John C. LeGrand, chief justice; Wm. H. Tuck, Jas. L. Bartol, associate justices; William A. Spencer, clerk.

In the record of proceedings of the same court, among others, were the following, to wit:

George T. Craufurd }
vs. }
Richard S. Blackburn. }

Be it remembered, that now here, on the first Monday in December, being the third day of the said month, in the year of our Lord one thousand eight hundred and sixty, the judge of the first judicial circuit of Maryland, in pursuance 75 of the directions of the acts of assembly in such case made and provided, transmit to the court of appeals here the record of proceedings of a plea which was lately depending before him in the circuit court of Charles county, between George T. Craufurd, plaintiff, and Richard S. Blackburn, defendant, and wherein the said circuit court gave judgment for said Richard S. Blackburn, against the said George T. Craufurd, and from which said judgment the said George T. Craufurd appeals to the court of appeals here, the tenor of which said record of proceedings is in form following, to wit:

Charles County, *to wit:*

At a circuit court of the first judicial court of the State of Maryland, begun and held at Port Tobacco, in and for Charles county aforesaid, on the first Monday of May, being the seventh day of the said month, in the year of our Lord one thousand eight hundred and sixty, and the eighty-fourth year of the independence of the United States of America—

Were present the honorable Peter W. Crain, judge; Peter Wheeler, esq., sheriff; G. W. Crain, clerk.

In the record of the proceedings of the same court, among other, is the following, to wit:

George T. Craufurd }
vs. }
Richard S. Blackburn. }

Be it remembered, that heretofore, to wit, on the thirtieth day of April, in the year of our Lord one thousand eight hundred and sixty, the clerk of the 76 circuit court for Prince George's county, in pursuance of the act of assembly in such case made and provided, transmitted to the clerk of the circuit court here for trial a transcript of the record and proceedings in the above case, wherein issues had been respectively framed by both parties, the tenor whereof is in the words following, to wit:

State of Maryland,
Prince George's County, sct:

At a circuit court for the first judicial circuit of Maryland, began and held at the town of Upper Marlborough, in and for Prince George's county aforesaid, on the first Monday in November, being the second day of the same month, in the year of our Lord one thousand eight hundred and sixty, and in the eighty-fourth year of the independence of the United States of America—

Were present the honorable Peter W. Crain, judge; Daniel R. Dyer, esq., sheriff; Chs. S. Middleton, clerk.

In the record and proceedings of the same court, among others, are the following, to wit:

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RICHARD S. BLACKBURN
vs.
GEORGE T. CRAUFURD.
GEORGE T. CRAUFURD
vs.
RICHARD S. BLACKBURN.

Be it remembered, that heretofore, to wit, on the fifteenth day of March, in the year of our Lord one thousand eight hundred and sixty, the orphans' court for Prince George's county, in pursuance of the act of assembly in such case
77 made and provided, transmitted to the circuit court here for trial a transcript of record and proceedings then in said court depending of the above case, wherein issues had been respectively framed by both parties, the tenor whereof is in the words following, to wit:

MARYLAND, *Prince George's County, sct:*

At an orphans' court held at Upper Marlborough town, in and for Prince George's county, on the 24th day of January, in the year of our Lord one thousand eight hundred and sixty, and in the eighty-third year of the independence of the United States of America—

Were present William B. Hill, C. J.; Basil T. Duckett, A. J.; William R. Barker, A. J.; John W. Webster, sheriff; William A. Jarboe, register.

There was among the proceedings of the same court the following, to wit:

In the orphans' court for Prince George's county.

RICHARD S. BLACKBURN
vs.
GEORGE T. CRAUFURD.
GEORGE T. CRAUFURD
vs.
RICHARD S. BLACKBURN.

Cross petition and answer filed

In the matter of the oral application of Richard S. Blackburn for grant of letters of administration upon the personal estate of David Craufurd,
78 late of Prince George's county, deceased.

In the orphans' court for Prince George's county, at a special court called for the 12th of January, 1860, George T. Craufurd, of the full age of twenty-one years, resident of Prince George's county, a nephew of the whole blood and next of kin of said David Craufurd, entitled under the laws of the land to letters of administration on the personal estate of the said David Craufurd, objects to the grant of letters of administration to the said Richard S. Blackburn, because your objectant is prepared to show by undeniable and competent proof that your objectant is the party legally entitled to the grant of letters of administration on the personal estate of said David Craufurd, and suggests to your honors that a day may be fixed by the court for the hearing of the said application and the taking of such testimony as either side may desire, and that plenary proceedings may be directed in the usual form.

D. C. DEGGES,
L. H. BERRY,
EDW'D W. BELT,
W. J. HILL,
For Objectors.

Ex

Ordered by the orphans' court for Prince George's county, this 12th day of January, 1860, upon the within oral application and the objection thereto, that the said Richard S. Blackburn and George T. Craufurd respectively file their petitions in writing for grant of letters in this case, and that they severally answer the said petitions upon oath or affirmation, as the case may be, and that plenary proceedings be had upon said petitions and answer.

79 WM. B. HILL,
WM. B. BARKER,
BASIL F. DUCKETT,
Judges of the Orphans' Court for Prince George's County.

RICHARD S. BLACKBURN
vs.
GEORGE T. CRAUFURD.
GEORGE T. CRAUFURD
vs.
RICHARD S. BLACKBURN.

In the orphans' court for Prince George's county, January 17th, 1860. The petition of Richard S. Blackburn for grant of letters of administration on the personal estate of David Craufurd filed January 12th, 1860. George T. Craufurd's petition for letters of administration on the personal estate of David Craufurd filed January 13th, 1860.

Continued to January 24th, 1860.

RICHARD S. BLACKBURN
vs.
GEORGE T. CRAUFURD.
GEORGE T. CRAUFURD
vs.
RICHARD S. BLACKBURN.

In the orphans' court for Prince George's county, January 24th, 1860. The petition of Richard S. Blackburn for grant of letters of administration of the personal estate of David Craufurd filed January 12th, 1860. The petition of George T. Craufurd for grant of letters of the personal estate of David Craufurd filed January 13th, 1860. R. S. Blackburn's answer to George T. Craufurd, together with Exhibit A, B, and C, filed January 17th, 1860.

George T. Craufurd's answer to petition of R. S. Blackburn, filed January 17, 1860.

80 To the honorable the justices of the orphans' court of Prince George's county, Maryland:

The petition of Richard S. Blackburn respectfully shows, that on or about the fifth day of December, eighteen hundred and fifty-nine, a certain Doctor David Craufurd, of this county and State, departed this life intestate, leaving a very large real and personal property; that the said David Craufurd was never married, and left neither widow, or a child, or children, or grandchild, or father, or brother, or sister, or mother, so that his next of kin of inheritable blood are entitled to the said estate and to administration thereon, according to the rules of law and the practice of this court. Your petitioner further shows, that a certain Nathaniel Craufurd, the father of the said David Craufurd, intermarried with one Sarah Blackburn, the sister of your petitioner's father, and had, as the issue of that marriage, the said David Craufurd, Nathaniel Craufurd, jr., Bushrod Craufurd, Thomas B. Craufurd, and Marian Craufurd, all of whom are dead, and died without ever having been married, or leaving any issue of in-

4 heritable blood. Your petitioner and certain other persons, male and female, living in the State of Virginia and District of Columbia, stand in the relation of first cousin to the said David Craufurd, deceased, and as such are entitled, as the next of kin of inheritable blood, to the said estate, both real and personal, left by him, and your petitioner avers that he is the eldest male heir and
81 distributee of said estate, and is therefore entitled to letters of administration thereon. He prays accordingly, and most respectfully, that your honors may direct letters of administration on the personal estate of said David Craufurd, deceased, to be granted unto him; and, in duty bound, he will ever pray, &c.

R. S. BLACKBURN.

The answer of George T. Craufurd to the petition of Richard S. Blackburn, exhibited in said orphans' court against your respondent.

To the honorable the judges of the orphans' court of Prince George's county:

This respondent, answering under oath, admitted that Dr. David Craufurd, named and referred to in the petition of the said Richard S. Blackburn, departed this life at the time therein stated, intestate and without issue, and never was married; that he left neither widow, or a child, or children, or grandchildren, or father, or brother, or sister, or mother. This respondent admits that the next of kin of the said David Craufurd are entitled to the estate left by him, which is very large and valuable, and consists both of real and personality. Your respondent admits that Nathaniel Craufurd, the father of the said David Craufurd, intermarried with one Sarah Blackburn, who was sister of the father of the petitioner, Richard S. Blackburn, and that the issue of that marriage is properly named and described in the said petition; that all of said issues are dead; that Thomas B. Craufurd, one of the children or issue of the said Nathaniel Craufurd and the above-named Sarah Craufurd, his wife, departed this life in the year 1848, having previously intermarried with Elizabeth Taylor, and had as the issue of that marriage your petitioner and his three sisters. Your respondent
82 admits that all the children of the said Nathaniel Craufurd are dead, but denies that all of them died without ever having been married, or leaving any issue of inheritable blood, but avers and insists, and is prepared to prove upon the trial of the proper issues to be sent down to the circuit court for Prince George's county from this honorable court, that the said Thomas C. Craufurd, a child of the said Nathaniel Craufurd and a brother of the full blood of the said David Craufurd, deceased, intermarried with Elizabeth Taylor, and that your respondent and his three sisters are the issue of said intermarriage, the next of kin to the said David Craufurd, deceased, and as such are entitled under the law of the land to the said estate. Your respondent denies that the said Richard S. Blackburn is the next of kin to the said David Craufurd, and therefore he is not entitled to any portion of the said estate and to letters of administration on the said personal estate, but insists that he, your respondent, is the oldest male heir and next of kin of the said David Craufurd, and as such is clearly entitled to letters of administration on the personal estate of the said David Craufurd, &c., &c.

GEORGE T. CRAUFURD.

PRINCE GEORGE'S COUNTY, *to wit:*

On this 17th day of January, 1860, before the subscriber, a justice of the peace of the said county, personally appeared George T. Craufurd, and made oath on the Holy Evangely of Almighty God that the facts contained in the aforegoing answer are true as stated, to the best of his knowledge and belief.

Sworn before C. R. BENSON, *J. P.*

83 To the honorable the judges of the orphans' court of Prince George's county:

The petition of George T. Craufurd, of said county, respectfully represents unto your honors, that David Craufurd, late of said county, deceased, departed this life on the fifth day of December, one thousand eight hundred and fifty-nine, leaving a very large real and personal estate; that the said David Craufurd never was married, and left neither widow or child, or children or grandchild, or father, or brother, or sister, or mother; so that his next of kin of inheritable blood are entitled to said estate, and to the administration thereon, according to the rule of law and practice of this court.

Your petitioner further shows, that a certain Thomas B. Craufurd, brother of the said David Craufurd, departed this life some time in the year one thousand eight hundred and forty-eight, all their other brothers and sisters having previously thereto died intestate, and without issue, and never having married.

But the said Thomas B. Craufurd intermarried with one Elizabeth Taylor, and had as the issue of that intermarriage the following children, to wit: Mary E. Craufurd, now the wife of John H. Sansbury; Sarah J. Craufurd, now the wife of Daniel R. Wall; your petitioner, George T. Craufurd, and Anna Victoria Craufurd, now the wife of Philip Hill, jr., all of whom are residents of said county; that your petitioner and his said sisters are the nephew and neices of the said David Craufurd, deceased, and as such are entitled as his next of kin to the said estate, both real and personal, left by the said David Craufurd, deceased; and your petitioner avers that he is the eldest male heir, and distributee of said estate, and is therefore entitled to letters of administration thereon.

84 Your petitioner, therefore, most respectfully prays your honors may direct letters of administration on the personal estate of said David Craufurd, deceased, to be granted unto him; and, as in duty bound, he will ever pray, &c., &c.

D. C. DEGGES,
L. H. BERRY,
EDW. H. BELT,
W. J. HILL,
For Petitioners.

In the orphans' court of Prince George's county.

Cross petition for letters of administration on the personal estate of David Craufurd, deceased.

Richard S. Blackburn
vs.
George T. Craufurd.

The answer of Richard S. Blackburn to the petition of George T. Craufurd for letters of administration on the personal estate of David Craufurd, deceased, heretofore filed in this court.

George T. Craufurd
vs.
Richard S. Blackburn.

To the honorable the justices of the orphans' court of Prince George's county Maryland:

The respondent, who is one of the next of kin of the said David Craufurd, and the eldest male heir of inheritable blood to his said estate, both real and personal, by way of answer to the petition of the said George T. Craufurd, respect-

fully states that he admits that the said David Craufurd departed this life on or about the fifth day of December last, leaving a very large real and personal estate. He also admits that the said David Craufurd was never married,
85 and died without issue, leaving neither a widow or child, or children, or
grandchild, or father, or brother, or sister, or mother; so that his next of kin of inheritable blood are entitled to his estate, and the administration thereon, according to the principles and rules of law in such cases.

This respondent, further answering, says that a certain Nathaniel Craufurd, the father of the said David Craufurd, intermarried with one Sarah Blackburn, the aunt of this respondent, and a sister of this respondent's father; that they have both long since departed this life, leaving as the issue and fruits of said marriage the said Dr. David Craufurd, Nathaniel Craufurd, jr., Bushrod Craufurd, Thomas B. Craufurd, and Marian Craufurd; that the said Nathaniel Craufurd, jr., Bushrod Craufurd, Thomas B. Craufurd, and Marian Craufurd never married, and each and all of them died without leaving any lawful children or inheritable issue; so that the only persons now in existence who are next of kin, and lawful heirs of the said David, are your respondents, a first-cousin, and eight or ten other persons, who are also first-cousins, living now in the State of Virginia and District of Columbia, and elsewhere, all of whom, as the said next of kin, are entitled to the said estate, both real and personal; and your respondent, who is the eldest male heir, is entitled to letters of administration on the said personal estate; all of which said averments this respondent is ready to prove whenever required.

Further answering, this respondent admits that the said Thomas B. Craufurd, the brother of the said David Craufurd, and the reputed father of the said George T. Craufurd, Mary E. Sansbury, Sarah Wall, and Anna S. Hill, mentioned in the said petition, departed this life some time in the month of
86 March, in the year eighteen hundred and forty-eight, but he utterly and
positively denies that the said Thomas B. Craufurd, in his lifetime, ever intermarried with the said Elizabeth Taylor, the mother of the said petitioner and her other named children; but, on the contrary, this respondent avers that the said petitioner, George T. Craufurd, and the other mentioned children, are illegitimate, and the natural children of the said Elizabeth Taylor, born out of lawful wedlock with the said Thomas B. Craufurd, or any other person; and as such illegitimate and natural children have no inheritable blood of the said Thomas B. or David Craufurd, deceased, and are not entitled to any portion of the said David Craufurd's estate, or to administration thereof.

In confirmation of these facts, this respondent states that on the 22d day of July, in the year 1844, the said Thomas B. Craufurd executed his last will and testament, which was duly admitted to probate in the orphans' court of Prince George's county on the fourth day of April, 1848, shortly after the death of the said Thomas B. Craufurd, in which he devises and bequeaths all his real and personal estate to his aforesaid children, describing them as natural children by the said Elizabeth Taylor; all of which will more fully appear by reference to the said last will and testament, a correct and true copy of which is herewith filed, marked Exhibit A, and which this respondent prays may be taken and considered as a part of his answer.

Further answering, this respondent says that by the said last will and testament of the said Thomas B. Craufurd a certain Thomas T. Bowie, of said county, was made and appointed executor and guardian to the aforesaid natural
87 children of him, the said Thomas B. Craufurd; that on the 15th of April,
1848, letters testamentary were granted by the orphans' court of said county to the said Thomas T. Bowie; that on the 17th of June, in the year 1856, the said Bowie passed his final account as executor, and on the 5th January, 1857, a full and final distribution of the said estate was made, as directed by said will, among the said natural children of Thomas B. Craufurd, as may

be seen by reference to the proceedings of the orphans' court aforesaid; and that during all this time they have held their respective portions of said estate in the character and under the description contained in the said will, and no pretence set up during all that time, either by the said Elizabeth Taylor, or any one of the said children, that she was ever lawfully married to the said Thomas B. Craufurd; and this respondent avers that no such pretended marriage was ever set up or mentioned until after the death of said Dr. David Craufurd, and in confirmation of this, your respondent refers to the following exhibits, marked B and C, herewith filed, being true copies of sundry deeds now of record among the land records of Prince George's county, by and between the said Elizabeth Taylor and her children and others, in which said deeds the said Elizabeth Taylor is described as the natural mother, and the children as the natural children of said Thomas B. Craufurd; all of which said exhibit this respondent prays me taken and considered as a part of this answer.

This respondent insists that after so long and repeated acquiescence by the said Elizabeth Taylor and the said George T. Craufurd in the true character of said George's paternity, and in her true relation to the said Thomas B. Craufurd
in his lifetime, it is now too late for either of them to question the illegiti-
88 macy of the said children of the said Elizabeth Taylor; and this respondent is advised that by their said conduct, acts, and declarations they are now estopped from setting up any such pretended marriage as the one set forth and relied on in the petition of the said George T. Craufurd.

This respondent, having thus fully answered the said petition, prays that the same may be dismissed, and that letters of administration on the personal estate of David Craufurd, deceased, may be granted unto him as the eldest male heir, being next of kin; and, as in duty bound, he will ever pray, &c.

RICHARD S. BLACKBURN.

STATE OF MARYLAND,
Prince George's County, sct:

Be it remembered, that on this 17th day of January, 1860, personally appeared before me, the subscriber, one of the State's justices of the peace in and for said county, Dr. Richard S. Baldwin, the respondent in the foregoing answer, and made oath on the Holy Evangely of Almighty God that the matters and things set forth and contained in the foregoing answer are true, to the best of his knowledge and belief.

Sworn before me. C. R. BENSON, *J. P.*

Exhibit A.

In the name of God, amen. I, Thomas B. Craufurd, of Prince George's county, in the State of Maryland, being apprehensive of death, but of sound and disposing mind, memory, and understanding, and being anxious, before I die, to settle and dispose of all my estate by last will and testament, do hereby make and publish this as my last will and testament.

89 In the first place, I desire all my just debts and funeral charges to be paid by my executor, hereinafter named, and after their payments I will and devise as follows:

I will, devise, and give unto George Thomas Craufurd, my natural son by Elizabeth Taylor, now about 8 years old, the one-half of my entire landed estate, to be laid off to him so as to include the dwelling-house, all the outhouses attached thereto, at Greenwood, wherein I now reside, to him the said George T. Craufurd, his heirs and assigns, in fee simple for ever.

Also I will, devise, and give the other moiety or half of all my landed estate to Mary Elizabeth Craufurd, Sarah Jane Craufurd, and Anna Victoria Craufurd, my natural children and daughters by the said Elizabeth Taylor, to be equally divided between them, share and share alike, to them, their heirs and assigns forever, as tenants in common. I give and bequeath unto the said George Thomas Craufurd, my aforesaid son, the one-half of all my negroes, and other personal estate of every description whatever, including debts due to me, and every other description of personal property whatever, to him, the said George Thomas Craufurd, his executors, administrators and assigns. The other half of my negroes and personal estate of every description, as aforesaid, whatever, I give and bequeath unto the aforesaid Mary Elizabeth Craufurd, Sarah Jane Craufurd and Anna Victoria Craufurd, my aforesaid natural children and daughters by the said Elizabeth Taylor, to be equally divided among them, share and share alike.

And whereas, in all probability, the said Elizabeth Taylor may be now pregnant and with child by me, I further will and devise that, in case such child shall be born after my death, that then, and in that event, said child shall have
an equal share with my aforesaid daughters in all that half of my real
90 and personal estate which I have hereinbefore devised and bequeathed to
them.

I further will and devise, and do hereby direct, that Elizabeth Taylor, the mother of my aforesaid children, shall live and have her home at Greenwood, with the aforesaid children, so long as she shall live single and unmarried.

And lastly, I do hereby constitute and appoint my friend, Thomas T. Bowie, to be sole executor of this my last will and testament, and guardian to my aforesaid children, for and until they shall respectively arrive at full age.

In testimony whereof, I have hereunto set my sign and mark—not being able to write my name, in consequence of a *parylctic* attack in my right arm, by which I have lost the use of it—and affix my seal, this twenty-second day of July, in the year of our Lord one thousand eight hundred and forty-four.

his
THOS. + B. CRAUFURD. [SEAL.]
mark.

Signed, sealed, published, and declared by Thomas B. Crauford, as his last will and testament, in our presence; and at his request, in his presence, and the presence of each other, we have subscribed our names as witnesses thereto.

BENJ. L. GAULT.
W. BOWIE BROOKE.
G. B. STONE.

PRINCE GEORGE'S COUNTY, *sct:*
April 4th, 1848.

Then came Benja. L. Gault and George B. Stone, two of the subscribing
witnesses to the within will of Thomas B. Craufurd, late of Prince
91 George's county, deceased, and made oath on the HolyEvangely of Al-
mighty God, that they did see the testator herein named sign and seal
this will, and heard him publish, pronounce and declare the same to be his last will and testament; that at the time of his so doing, he was, to the best of their apprehension, of sound and disposing mind, memory and understanding; and that they, together with W. Bowie Brooke, the other subscribing witness, respectfully subscribed their names as witnesses to this will, in the presence of the testator, at his request, and in presence of each other.

Sworn before

JAMES HARPER,
Reg'r of Wills of P. G. County.

PRINCE GEORGE'S COUNTY, *sct:*

I, William A. Jarboe, register of wills for the county aforesaid, in the State of Maryland, do hereby certify that the aforegoing is a true copy of the last will and testament of Thomas B. Craufurd, late of said county, deceased, duly proven according to law, and now upon record remaining in my office.

Orphans' court for Prince [SEAL.] George's county, Maryland.

In testimony whereof, I hereunto set my hand and affix the seal of the orphans' court for Prince George's county, this 12th day of January, A. D. 1860.

WILLIAM A. JARBOE,
Reg'r of Wills for P. G. County.

Exhibit B.

Know all men by these presents that I, George T. Craufurd, of Prince George's county and State of Maryland, for and in consideration of the natural love and affection which I have towards my mother, Elizabeth Taylor, and for the purpose of securing her better maintainance and support, have given, granted, transferred, assigned and conveyed, and do by these presents give, grant, assign and convey unto the said Elizabeth Taylor, her executors, administrators,
92 and assigns, negro girl Amelia, aged about sixteen years, a slave for life, and I hereby warrant and defend the said negro to be a slave for life, and the full and entire property of the grantee herein named, according to the effect and true intent thereof.

In witness whereof, I have hereto set my hand and affixed my seal, this 12th day of November, one thousand eight hundred and fifty-six.

GEORGE T. CRAUFURD. [SEAL.]

Signed, sealed, and delivered in the presence of—the words Amelia and November being first interlined—

D. C. DEGGES,
CEPHUS R. BENSON.

STATE OF MARYLAND,
Prince George's County, sct:

Personally appeared, on the 12th day of November, 1856, before the undersigned, a justice of the peace of the said State, in and for the county aforesaid, George T. Craufurd, who is personally known to me to be the party grantor to the above deed of gift, and acknowledged the same to be his act and deed, for the purpose therein mentioned.

C. R. BENSON, *J. P.*

Enrolled the 13th day of November, 1856.

STATE OF MARYLAND,
Prince George's County, sct:

I hereby certify that the foregoing is truly taken and copied from liber C. L. M., No. 1., fol. 410 and 411, one of the land record books of said county. In testimony whereof, I have hereunto subscribed my name, and affix'd the seal of the circuit court for Prince George's county, this thirteenth day of January, anno Domini one thousand eight hundred and sixty.

Circuit court of [SEAL.] Prince George's county.

93 CHS. S. MIDDLETON,
Clerk of the Circuit Court for P. G. County.

Exhibit C.

Know all men by these presents, that I, Daniel R. Wall, of Prince George's county, in the State of Maryland, for and in consideration of the sum of ten dollars, current money, to me in hand paid by Elizabeth Taylor, of the county and State aforesaid, at and before the sealing and delivery of these presents, the receipt whereof, I, the said Daniel R. Wall, do hereby acknowledge, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said Elizabeth Taylor, her executors, administrators, and assigns, the following property hereinafter mentioned—that is to say, one wagon and harness; one bay horse, nine years old; one sorrel horse, about twelve years old; all and singular which said property are now remaining, standing, and being in my possession: to have and to hold all and singular the said property and other the premises above bargained and sold, or mentioned and intended so to be to the said Elizabeth Taylor, her executors, administrators, and assigns forever; and I, the said Daniel R. Wall, for myself, my heirs, executors, and administrators, all and singular the said property and premises unto the said Elizabeth Taylor, her executors, administrators, and assigns, against me, the said Daniel R. Wall, my executors, administrators, and against all and every other person and persons whatsoever, shall and will warrant and forever defend by these presents, of all and singular which said property and other the premises I, the said 94 Daniel R. Wall, have put the said Elizabeth Taylor in full possession by delivering to her, the said Elizabeth Taylor, one sorrel horse, at the sealing and delivery of these presents, in the name of the whole premises hereby bargained or mentioned, and intended so to be, unto the said Elizabeth Taylor aforesaid.

In witness whereof, I have hereunto set my hand and affixed my seal, this 20th day of March, anno Domini 1857.

D. R. WALL. [SEAL.]

Signed, sealed, and delivered in the presence of—

J. R. BROOKS.

STATE OF MARYLAND,
Prince George's County, sct:

Be it remembered, and it is hereby certified, that on this 20th day of March, eighteen hundred and fifty-seven, before the subscriber, one of the justices of the peace of the county and State aforesaid, personally appeared Daniel R. Wall, he being known to me to be the person who is named and described as and professing to be a party to the aforegoing bill of sale or instrument of writing, and doth acknowledge the said instrument of writing to be his act and deed; and also, at the same time and place, came before me, the subscriber, a justice as aforesaid, Elizabeth Taylor, and made oath on the Holy Evangely of Almighty God the aforegoing bill of sale is just and bona fide, and the and things therein set forth is true and bona fide set forth.

Given under my hand and seal the day and year aforesaid.

THOMAS R. BROOKS, *J. P.* [SEAL.]

Enrolled 21st day of March, 1857.

95 STATE OF MARYLAND,
Prince George's County, sct:

I hereby certify that the aforegoing bill of sale is truly taken and copied from liber C. L. M., No. 1, fol. 521, &c., one of land record books of said county.

Circuit court for Prince
[SEAL.]
George's county, Maryland.

In testimony whereof, I have hereunto set my name and affixed the seal of the circuit court for Prince George's county, this 13th day of January, anno Domini one thousand eight hundred and sixty.

C. S. MIDDLETON,
Clerk of the Circuit Court for Prince George's County.

The State of Maryland to the sheriff of Prince George's county, greeting:

You are hereby commanded to summons Charles S. Middleton, clerk of the

circuit court for Prince George's county, and Henry Brooke, his deputy clerk, that, all excuses and delays being set aside, they be and appear before the justices of the orphans' court, at a session of the said orphans' court of Prince George's county, to be held at Upper Marlborough on the 17th day of January, 1860, and that they then and there bring with them, and produce at the time and place aforesaid, a deed of gift, bearing date on the 12th November, 1856, executed by one George T. Craufurd to a certain Elizabeth Taylor; and also they bring with them a certain other deed of gift or bill of sale from Daniel R. Wall to a certain Elizabeth Taylor, bearing date on the 20th March, 1857; and then and there to testify and all and singular those things which they know of the said
deeds of gift and bills of sale, a conveyance do impart of one concerning
96 a certain matter of controversy in the said orphans' court, pending between Richard L. Blackburn and George T. Craufurd, and as touching the right of administration upon the personal estate of David Craufurd, late of Prince George's county, deceased, now pending between the said Richard S. Blackburn and the said George T. Craufurd on the part of the said Richard S. Blackburn; hereof fail not at your peril, and have you then and there this writ.

Orphans' court for Prince
[SEAL.]
George's county, Maryland.

Witness William B. Hill, esquire, chief judge of the orphans' court for Prince George's county, this 17 day of January, 1860.

Issued 17th day of January, 1860.

Test: WILLIAM A. JARBOE,
Reg'r of Wills for P. G. County.

The aforegoing summons returned endorsed thereon:
Summoned Brooke; not sum'd Middleton.

D. R. DYER, *Sheriff.*

Test: WM. A. JARBOE,
Reg'r of Wills for P. G. Co'ty.

The State of Maryland to the sheriff of Prince George's county, greeting:

You are hereby commanded to summons Charles S. Middleton, clerk of the circuit court for Prince George's county, and Benjamin H. Mulliken, his deputy
clerk, that, all excuses and delays being laid aside, they be and appear
97 before the justices of the orphans' court, at a session of the said orphans'
court of Prince George's county, to be held at the town of Upper Marlborough on the 24th day of January, 1860, and that they then and there bring with them, and produce at the time and place aforesaid, a deed of gift, bearing date on the 12th of November, 1856, executed by one George T. Craufurd to a certain Elizabeth Taylor, bearing date on the 20th of March, 1857, and then and there to testify, and show all and singular those things which they know of the said deeds of gift and bills of sale, a conveyance do impart of one concerning a matter of controversy in the said orphans' court, pending between Richard S. Blackburn and George T. Craufurd, and as touching the right of administration upon the personal estate of the said David Craufurd, of Prince George's county, deceased, now pending between the said Richard S. Blackburn and the said George T. Craufurd, on the part of the said Richard S. Blackburn. Hereof fail not at your peril, and have you then and there this writ.

Orphans' court for Prince
[SEAL.]
George's county, Maryland.

Witness Wm. B. Hill, esquire, chief judge of the orphans' court for Prince George's county, this 17th day of January, 1860.

Test: WM. A. JARBOE,
Register of Wills for P. G. County.

The aforegoing summons returned endorsed thereon: Cope.

D. R. DYER, *Sheriff.*

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Orphans' court for Prince George's county, Maryland.

MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's county, greeting:

98 You are hereby commanded to summons James W. Lowe, so that all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's county, to be held at Upper Marlborough town, in said county, on Tuesday, 24th day of January, 1860, to testify for Richard S. Blackburn, before said court, in the matter of controversy in the said court touching the right of administration on the personal estate of David Craufurd, late of said county, deceased.

Hereof fail not at your peril, and have you then and there this writ.

Witness Wm. B. Hill, chief justice of the orphans' court for Prince George's county, this 17th day of January, 1860.

Issued 17th day of January, 1860.

Test: WM. A. JARBOE,
Reg'r of Wills for P. G. County.

The aforegoing summons returned endorsed thereon: Summoned.

D. R. DYER, *Sheriff.*

Test: WM. A. JARBOE, *Reg'r.*

Orphans' court for Prince George's county, Maryland.

STATE OF MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's county, greeting:

You are hereby commanded to summons Dr. John H. Boyle, so that, all de-
lays being set aside, he be and appear before the justices of the orphans' court
for Prince George's county, to be held at Upper Marlborough town, in said
county, on Tuesday, 24th day of January, 1860, to testify for Richard S.
Blackburn, before said court, in the matter of controversy between
99 Richard S. Blackburn and George T. Craufurd, touching the right of
administration on the personal estate of David Craufurd, late of said
county, deceased, now pending before said orphans' court.

Hereof fail not at your peril, and have you then and there this writ.

Witness Wm. B. Hill, esquire, chief judge of the orphans' court for Prince George's county, the 17th day of January, 1860.

Issued 17th day of January, 1860.

Test: WM. A. JARBOE, *Reg'r.*

The aforegoing summons returned endorsed thereon: Summoned.

D. R. DYER, *Sheriff.*

Test: WM. A. JARBOE, *Reg'r.*

Orphans' court for Prince George's county, Maryland.

MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's county, greeting:

You are hereby commanded to summon Henry J. Ball, so that, all delays be set aside, he be and appear before the justices of the orphans' court of Prince George's county, to be held at Upper Marlborough town, in said county, on the 24th day of January, 1860, to testify for Richard S. Blackburn, before said court, in the matter of controversy between Richard S. Blackburn and George T. Craufurd, touching the right of administration on the personal estate of

Ex

David Craufurd, late of said county, deceased, now pending before said orphans' court.

Hereof fail not at your peril, and have you then and there this writ.

Witness Wm. B. Hill, esquire, chief justice of the orphans' court for Prince George's county, the 17th day of January, 1860.

Issued the 17th day of January, 1860.

100 Test: WM. A. JARBOE, *Reg'r.*

The aforegoing summons returned endorsed thereon: Summoned.

D. R. DYER, *Sheriff.*

Test: WM. A. JARBOE, *Reg'r.*

Orphans' court for Prince George's county, Maryland.

MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's county, greeting:

You are hereby commanded to summons William Duvall, so that, all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's county, to be held at Upper Marlborough town, in said county, on the 24th day of January, 1860, to testify for Richard S. Blackburn, before said court, in the matter of controversy between Richard S. Blackburn and George T. Craufurd, touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said orphans' court.

Hereof fail not at your peril, and have you then and there this writ.

Witness Wm. B. Hill, chief justice of the orphans' court for Prince George's county, the 17th day of January, 1860.

Issued the 17th day of January, 1860.

Test: WM. A. JARBOE, *Reg'r.*

The aforegoing summons returned enclosed thereon: Summoned.

D. R. DYER, *Sheriff.*

Test: WM. A. JARBOE, *Reg'r.*

Orphans' court for Prince George's county, Maryland.

101 MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's county, greeting:

You are hereby commanded to summons Thomas Talbert, so that, all delay be set aside, he be and appear before the judges of the orphans' court for Prince George's county, to be held at Upper Marlborough town, in said county, on the 24th day of January, 1860, to testify for Richard S. Blackburn, before said court, in the matter of controversy between Richard S. Blackburn and George T. Craufurd, touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, and now pending in said orphans' court.

Hereof fail not at your peril, and have you then and there this writ.

Witness Wm. B. Hill, chief judge of the orphans' court for Prince George's county, the 17th day of January, 1860.

Issued the 17th day of January, 1860.

Test: WM. A. JARBOE, *Reg'r.*

The aforegoing summons returned endorsed thereon: Summoned.

D. R. DYER, *Sheriff.*

Test: WM. A. JARBOE, *Reg'r.*

Orphan's court for Prince George's county, Maryland.

Maryland, *sct.:*

State of Maryland to the sheriff of Prince George's county, greeting:

You are hereby commanded to summons J. J. Jarboe, so that, all delays be set aside, he be and appear before the judges of the orphans' court of Prince George's county, to be held at Upper Marlborough town, in said county, on the 24th day of January, 1860, to testify for Richard S. Blackburn, before the
said court, in the matter of controversy between Richard S. Blackburn
102 and George T. Craufurd, touching the right of administration on the
personal estate of David Craufurd, late of said county, deceased, now pending before said court.

Hereof fail not at your peril, and have you then and there this writ.

Witness Wm. B. Hill, esquire, chief judge of the orphans' court for Prince George's county, this 17th day of January, 1860.

Issued 17th day of January, 1860.

Test: WM. A. JARBOR, *Reg'r.*

The above summons returned endorsed thereon: Summoned.

D. R. DYER, *Sheriff.*

Test: WM. A. JARBOE, *Reg'r.*

Orphans' court for Prince George's county, Maryland.

State of Maryland:

To the sheriff of Prince George's county, greeting:

You are hereby commanded to summons Richard Hopkins, so that, all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's county, to be held at Upper Marlborough town, in said county, on the 24th day of January, 1860, to testify for Richard S. Blackburn, before said court, in the matter of controversy between Richard S. Blackburn and George T. Craufurd, touching the right of administration on the personal estate of David Craufurd, late of Prince George's county, deceased, now pending before said court.

Hereof fail not at your peril, and have you then and there this writ.

Witness Wm. B. Hill, esquire, chief judge of the orphans' court for
103 Prince George's county, the 17th day of January, 1860.

Issued January 17th, 1860.

Test: WM. A. JARBOE, *Reg'r.*

The above summons returned endorsed thereon: Summoned.

D. R. DYER, *Sheriff.*

Test: WM. A. JARBOE, *Reg'r.*

Orphans' court for Prince George's county, Maryland.

Maryland, *sct:*

The State of Maryland to the sheriff of Prince George's county, greeting:

You are hereby commanded to summons J. J. Jarboe, so that, all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's county, to be held at Upper Marlborough town, in said county, on the 24th day of January, 1860, to testify for George T. Craufurd, before said court, in the matter of controversy between George T. Craufurd and Richard S. Blackburn, touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said orphans' court.

Hereof fail not at your peril, and have you then and there this writ.

Witness Wm. B. Hill, esquire, chief judge of the orphans' court for Prince George's county, this 17th day of January, 1860.

Issued the 17th day of January, 1860.

Test: WM. A. JARBOE, *Reg'r.*

The above summons returned endorsed thereon: Summoned.

D. R. DYER, *Sheriff.*

Test: WM. A. JARBOE, *Reg'r.*

Orphans' court for Prince George's county, Maryland.

104 MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's county, greeting:

You are hereby commanded to summons Harriet Furgusson, so that, all delays be set aside, she be and appear before the justices of the orphans' court for Prince George's county, to be held at Upper Marlborough town, in said county, on the 24th day of January, 1860, to testify for George T. Craufurd, before the said court, in the matter of controversy between George T. Craufurd and Richard S. Blackburn, touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said court.

Hereof fail not at your peril, and have you then and there this writ.

Witness Wm. B. Hill, chief justice of the orphans' court for Prince George's county, the 17th day of January, 1860.

Issued the 17th day of January, 1860.

Test: WM. A. JARBOE, *Reg'r.*

The above summons returned endorsed thereon: Summoned.

D. R. DYER, *Sheriff.*

Test: WM. A. JARBOE, *Reg'r.*

Orphans' court for Prince George's county, Maryland.

MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's county, greeting:

You are hereby commanded to summons James N. Lowe, so that, all delays be
set aside, he be and appear before the justices of the orphans' court for Prince
George's county, to be held at Upper Marlborough town, in said county,
105 on the 24th day of January, 1860, to testify for George T. Craufurd, be-
fore said court, in the matter of controversy between George T. Craufurd and Richard S. Blackburn, touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said orphans' court.

Hereof fail not at your peril, and have you then and there this writ.

Witness Wm. B. Hill, esquire, chief judge of the orphans' court for Prince George's county, the 17th day of January, 1860.

Issued the 17th day of January, 1860.

Test: WM. A. JARBOE, *Reg'r.*

The above summons returned endorsed thereon: Summoned.

D. R. DYER, *Sheriff.*

Test: WM. A. JARBOE, *Reg'r.*

Orphans' court for Prince George's county, Maryland.

MARYLAND *sct:*

The State of Maryland to the sheriff of Prince George's county, greeting:

You are hereby commanded to summons James L. Brashears, so that, all delays be set aside, he be and appear before the judges of the orphans' court for Prince George's county, to be held at Upper Marlborough town, in said county, on the 24th day of January, 1860, to testify for George T. Craufurd, before the said court, in the matter of controversy between George T. Craufurd and Richard S. Blackburn, touching the right of administration on the personal estate of David Craufurd late of said county, deceased, now pending before said court.

Hereof fail not at your peril, and have you then and there this writ.

Witness Wm. B. Hill, chief judge of the orphans' court for Prince George's county, the 17th day of January, 1860.

Issued the 17th day of January, 1860.

The above summons returned endorsed thereon: Summoned.

D. R. DYER, *Sheriff.*

Test: WM. A. JARBOE, *Reg'r.*

106 MARYLAND, *sct:*

Orphans' court for Prince George's county, Maryland.

The State of Maryland to the sheriff of Prince George's county greeting:

You are hereby commanded to summons William H. Wilson, so that, all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's county, to be held at Upper Marlborough town, in said county, on the 24th day of January, 1860, to testify before said court for George T. Craufurd, in the matter of controversy between George T. Craufurd and Richard S. Blackburn, touching the right of administration on the personal estate of David Craufurd, late of said county, deceased.

Hereof fail not at your peril, and have you then and there this writ.

Witness Wm. B. Hill, esquire, chief judge of the orphans' court for Prince George's county, the 17th day of January, 1860.

Issued the 17th day of January, 1860.

Test: WM. A. JARBOE, *Reg'r.*

The above summons returned endorsed thereon: Summoned.

D. R. DYER, *Sheriff.*

Test: WM. A. JARBOE, *Reg'r.*

In the orphans' court for Prince's George county.

RICHARD S. BLACKBURN
vs.
GEORGE T. CRAWFORD.

Cross-petition and answer heretofore filed.

GEORGE T. CRAWFORD
vs.
RICHARD S. BLACKBURN.

Supplemental petition of George T. Craufurd, praying for issues to be sent

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down to the circuit court for Prince George's county, filed in the said orphans' court on the 24th day of January, 1860.

107 To the honorable the judges of the orphans' court for Prince George's county:

The supplemental petition of George T. Craufurd respectfully shows, that he is entitled, and hereby requires that issues be framed by your honorable court, touching the matter in controversy between your aforesaid petitioner and the said Richard S. Blackburn, and he submits to your honorable court that the following issues be adopted by your honorable court and transmitted to the circuit court for Prince George's county, for trial according to the act of assembly in such case made and provided, viz:

First. Whether your petitioner, George T. Craufurd, is one of the next of kin to the said David Craufurd on the part of the father of said David Craufurd.

Second. Whether there is any male other than your petitioner, George T. Craufurd, of the next of kin to the said David Craufurd on the part of the father of the said David Craufurd.

And your petitioner will ever pray, &c.

SAMUEL H. BERRY,
D. C. DIGGES,
EDWARD W. BELT,
WM. J. HILL,
Attorneys for Petitioner.

In the orphans' court for Prince George's county, January 24th, 1860.

Upon the hearing of the supplemental petition aforegoing of George T. Craufurd, requiring issues to be framed touching the matter in controversy between the said George T. Craufurd and the said Richard S. Blackburn, it is ordered by the orphans' court of Prince George's county, this 24th day of January, 1860, that the aforegoing two issues asked for by the petitioner in his aforesaid supplemental petition and the addition, issues offered by the said Richard S. Blackburn as the third issue to—wit:
108 Third. Whether the said Thomas B. Craufurd was ever lawfully married to the said Elizabeth Taylor, either before or after the birth of the said George T. Craufurd—be transmitted to the circuit court for Prince George's county for trial, according to the act of assembly in such case made and provided.

WM. B. HILL,
BASIL T. DUCKETT,
WM. R. BARKER,
Judges of the Orphans' Court for Prince George's County.

Orphans' court for Prince George's county, Maryland.

STATE OF MARYLAND,
Prince George's County, sct:

I, William A. Jarboe, register of wills for the county in the State aforesaid, do hereby certify that the aforegoing matter is truly copied from the records and proceedings of the orphans' court of Prince George's county.

In testimony whereof, I hereunto set my hand and affix the seal of the orphans' court for Prince George's county, this 14th day of March, anno Domini one thousand eight hundred and sixty.

Test: WM. A. JARBOE,
Register of Wills for P. G. County.

And now here at this day, to wit, the first Monday in April, in the year of our Lord one thousand eight hundred and sixty, come into court here as well the said Richard S. Blackburn as the said George T. Craufurd, by their attorneys aforesaid.

And whereupon the said George T. Craufurd files in court here the following petition, to wit:

In the circuit court for Prince George's county, April term, 1860.

RICHARD S. BLACKBURN
vs.
GEORGE T. CRAUFURD. } Transcript from the orphans' court of Prince George's county.

109 GEORGE T. CRAUFURD
vs.
RICHARD S. BLACKBURN. } Same.

To the honorable Peter W. Crain, esq., judge of the circuit court for Prince George's county:

George T. Craufurd, one of the parties to the above suit, suggests to the court here that he cannot have a fair and impartial trial of said cause in this court; and prays that your honors will pass an order directing that the record of proceedings in said suits be transmitted to the court of any adjourned county, to hear and determine the same.

GEORGE T. CRAUFURD.

STATE OF MARYLAND,
Prince George's County, to wit:

On the fourth day of April, in the year of our Lord one thousand eight hundred and sixty, personally appeared before the subscriber, a justice of the peace of said State, in and for said county, George T. Craufurd, the above party, and made oath on the Holy Evangely of Almighty God that the matters and things stated in the above suggestion are true to the best of his knowledge and belief.

J. W. SCOTT, *J. P.* [SEAL.]

Whereupon the court here passed the following order, viz:

In a circuit court for Prince George's county.

It is ordered, this fifth day of April, anno Domini eighteen hundred and sixty, on the within suggestions and affidavit, that the record in this case, with all the papers appertaining to the same, be transmitted by the clerk of this court to the circuit court of Charles county, with a list of witnesses, for trial in that court.

PETER W. CRAIN.

110 In pursuance of the aforegoing order, all and singular the proceedings in said cause, with all things thereunto relating, are hereby transmitted to the circuit court for Charles county.

Test: CHARLES S. MIDDLETON, *Clerk.*

Circuit court for Prince George's county, Maryland.

STATE OF MARYLAND,
Prince George's County, sct:

I hereby certify that the aforegoing is truly taken and copied from the records and proceedings of the circuit court for Prince George's county.

In testimony whereof, I have hereunto subscribed my name and affixed the

Ex.

seal of the circuit court for Prince George's county, this 27th day of April, anno Domini 1860.

CHARLES S. MIDDLETON, *Clerk.*

And now here at this day, to wit, the first Monday of May, being the seventh day of the same month, in the year of our Lord one thousand eight hundred and sixty, come into the said circuit court for Charles county the said George T. Craufurd, by Samuel H. Berry, Thomas G. Pratt, Robert J. Brent, George Brent, Edward W. Belt and Walter Bowie, esq'rs, his attorneys, as the said Richard S. Blackburn, by Thomas T. Bowie, C. C. Magruder, J. S. Alexander, F. Stone, John B. Brooks and John N. Mitchell, esqs., his attorneys.

And thereupon, for trying the issues aforesaid framed between the parties aforesaid, it is ordered by the court here that twenty-five persons from the panel of petit jurors returned to the court here by the sheriff of the county aforesaid be drawn by ballot, according to the directions of the act of assembly in such cases made and provided; and the panel of petit jurors returned to the 111 term being called, seventeen of said jurors and no more appeared, whereupon the said George T. Craufurd moved the court that eight talesmen be summoned to form, with the said seventeen, a complete panel of twenty-five jurors, and that from the panel of twenty-five, twenty names be drawn by lot, from whom the petit jury of twelve may be taken as directed by law; and thereupon the twelve persons being drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel of the respective parties, and the counsel for each of the said parties having stricken out four persons from the said list, the remaining twelve persons being called, come—that is to say, John T. Colton, Leonard Tarrall, Henry Muschett, Henry A. Neal, James A. Mudd, Henry S. Dent, Wm. Hamilton, George Taylor, Thomas R. Halley, Richard B. Posey, Jonas H. Hawkins and James W. Busch, who were empanelled and sworn to say the truth in the premises.

Whereupon the said plaintiff, by his attorneys aforesaid, prays the court to grant the following prayers, which were granted by the court:

No. 1. If the jury believe from the evidence that a marriage was solemnized between the said Elizabeth Taylor and the deceased, Thomas B. Craufurd, at the time and in the manner stated by the said Elizabeth, and if they further find that George T. Craufurd, named in the issues in this cause, is the child of the said Thomas B. Craufurd and Elizabeth Taylor, born more than two months after said intermarriage, and that the said George T. Craufurd is the nearest male relative of the said David Craufurd, on the part of the father of the said David Craufurd, then their verdict must be for the said George T. Craufurd.

No. 2. If the jury find from the evidence that for several years before his death the said Thomas B. Craufurd, and the witness, Elizabeth Craufurd, 112 otherwise called Elizabeth Taylor, cohabited; that the said Elizabeth became the mother of four children, now living, who were acknowledged by the said Thomas B. Craufurd to be his children; that the said children were educated and supported at the expense of, and by the said Thomas B. Craufurd, and were required by him to be called by the name of Craufurd; and if the jury further find that during a part of this time the said Elizabeth resided at the place called Montery, and that, during her residence at Montery, the said Thomas B. Craufurd stated, on several occasions, that he had married the said Elizabeth, and would bring her to his residence at Greenwood, so soon as his brother, Dr. David Craufurd, should remove therefrom; and that thereafter the said David Craufurd removed from said residence at Greenwood; and that, shortly afterwards, the said Thomas B. Craufurd, in 1844, brought the said Elizabeth and her said children to his residence at Greenwood; and if they further find that from that time and during the residence of his life, he and the said Elizabeth cohabited at his residence, as man and wife; and that the said

Elizabeth during that time sat at the head of his table, presided over the household affairs at Greenwood, with the assent of the said Thomas B. Craufurd; and that on several occasions during that time he acknowledged that the said Elizabeth was his wife; then the jury may, upon the foregoing facts, presume a lawful marriage between the said Thomas B. Craufurd and the said Elizabeth, notwithstanding the other testimony in the cause; and if the jury, from the whole evidence in the case, find such marriage, their verdict must be in favor of the said marriage between the said Thomas and Elizabeth.

113 No. 3. That if the jury shall, from all the evidence in this cause, find that a marriage was had between the said Thomas B. Craufurd and the said Elizabeth Taylor, then the said marriage cannot be invalidated because the jury may find that no marriage license was previously had. And thereupon the said defendant, by his attorneys aforesaid, prays the court to grant him the following prayer, which was also granted:

That, on all the evidence in this cause, it will be competent for the jury to find that the cohabitation between the said Thomas B. Craufurd, deceased, and Elizabeth Taylor, during the entire period of such cohabitation, was illicit, and that no marriage was solemnized between them; and if the jury shall so find, their verdict ought to be for the defendant on the third issue.

And the jurors aforesaid, upon their oaths do say, that the said George T. Craufurd is not one of the next of kin to the said Craufurd, on the part of the father of the said David Craufurd; and the jurors aforesaid, upon their oaths aforesaid, do further say, that the said Thomas B. Craufurd was never lawfully married to the said Elizabeth Taylor, either before or after the birth of the said George T. Craufurd; and they therefore find a verdict for the said defendant in all of the said issues. It is therefore considered by the court here that the said defendant recover against the said plaintiff the sum of one hundred and seventy-two dollars $\frac{46}{100}$, by the court, on his assent, adjudged unto the said defendant for his costs and charges by him about his defence in this behalf laid out and expended, &c.

Memo.—Before the jurors aforesaid withdrew from the bar of the court here, the said parties, by their attorneys aforesaid, filed in court here the following bills of exceptions:

Circuit court for Charles county.

114 George T. Craufurd
vs. } Issues.—First exception.
Richard S. Blackburn.

Those issues being called for trial, and the panel of petit jurors returned to the term being called, seventeen of said jurors and no more appeared; whereupon the said Craufurd moved the court that eight talesmen be summoned to form, with the said seventeen, a complete panel of twenty-five jurors; and that from the said panel of twenty-five twenty names be drawn by lot, from whom the petit jury of twelve may be taken, as directed by law. To which the said Blackburn objected, and moved that so many talesmen be summoned as, with the petit jurors of the regular panel in attendance, would form the number of twenty jurors, from whom the petit of twelve may be struck; but the court overruled said objection, and ordered eight talesmen to be summoned, and they were summoned accordingly; and their names being put into the box with the names of the seventeen of the regular panel in attendance, twenty names were drawn therefrom, and each party was required to strike and do strike four names, and the remaining twelve jurors were empanelled and sworn to try the said issues; to which ruling of the court and empanelling of the jury aforesaid the defendant excepted, and prayed the court to sign and seal this bill of exception, which is done accordingly, this 21st day of May, 1860.

PETER W. CRAIN. [SEAL.]

Ex.

Circuit court for Charles county.

George T. Crauford }
vs. } Issues.—Second exception.
Richard S. Blackburn. }

115 After the jury had been empanelled and sworn, as stated in the first exception, which is to be taken as part of this exception, the said Craufurd claimed the right of opening and concluding the case before the jury. The said Blackburn, on his part, insisted and claimed that of right he was entitled to open and conclude the case before the jury. Whereupon the court here adjudged and ordered that the said Craufurd be the plaintiff, and as such is entitled to the opening and concluding of these issues before the jury; and that the said Blackburn be the defendant thereto; to which ruling of the court the said Blackburn excepted, and prayed the court here to sign and seal this bill of exception, which is accordingly done, this 21st day of May, 1860.

PETER W. CRAIN. [SEAL.]

Circuit court for Charles county.

George T. Craufurd }
vs. } Issues.—Third exception.
Richard S. Blackburn. }

At the trial of these issues the plaintiff, to sustain the issues on his part, produced Mrs. Harriet Furgusson, a competent witness on his part, who being duly sworn, proved that she knew Thomas B. Craufurd, and had known him for twenty-two years; she lived upon his property eleven years before he died, during which time her former husband, Mr. Stone, was the miller and overseer for Mr. Craufurd; Mr Craufurd died about 12 years ago, and she and her husband left there the June after his death; she knew Elizabeth Taylor, or Mrs. Craufurd, when she lived at Montery, in 1842. The witness stated that she was joking Thomas B. Craufurd about his getting married. He told her in the presence of her husband, Mr. Stone, that he was married; that he had 116 been married for several years to Elizabeth Taylor, and that they were married in Washington by a priest, but did not mention his name. He further stated that his brother, David Craufurd, was very curious, and he did not want his marriage divulged to him. The witness further stated, that she frequently bought butter and eggs from Mr. Craufurd, and was referred by him after the year 1842, generally, to his wife, Mrs. Craufurd, or sometimes to Betsy. The witness further stated, she again heard Thomas B. Craufurd, in the year 1843, say that he was married to Elizabeth Taylor; Mr. Craufurd and her late husband, Mr. Stone, were talking about a marriage which had taken place a short time before in the neighborhood, and were remarking about the evening on which it happened being very gusty, when Mr. Craufurd said that the day on which he, Mr. Craufurd, was married, was a very fine one; he also repeated what he had before said relative to his marriage in the year 1842. The witness further said, that Mrs. Craufurd remained at Montery until about four years before the death of Thomas B. Craufurd, when she removed to Greenwood, the family residence of the Craufurds. When she, Mrs. Craufurd, lived at Montery, she went backwards and forwards to Greenwood with her children, and Mr. Craufurd would frequently take the children down to Montery from Greenwood on his horse before him; the distance was about a mile. The witness further testified, that Mrs. Craufurd had control of everything at Montery, which was on Mr. Craufurd's land, and that after she went to Greenwood, she went thro' the house and acted in every respect as any other gentleman's wife would at the house of her husband. The witness further proved, that Mr.

117 Craufurd treated her, Mrs. Craufurd, very kindly, and was very affectionate to the children; that she, Mrs. Craufurd, rode about with him frequently in his carriage; she further proved that when she first knew Mrs. Craufurd she was a very beautiful woman.

Upon cross-examination this witness testified, that her maiden name was Harriet Sweeney; that her first husband was the miller of Mr. Craufurd; that he was at the mill for nine years; she heard the news circulated that Mr. Craufurd was married, and, therefore, she spoke of it to him. She further testified, that she visited Mrs. Craufurd, from the year 1838 to 1842, while at Montery, and after she went to Greenwood. She further testified, that her husband was the miller of Mr. Craufurd for nine years, and acted one year as his overseer; and that they moved from Mr. Craufurd's in June, after Gen'l Bowie took possession of the property.

This witness further testified, that she never mentioned this fact of Craufurd's marriage until yesterday, but that she and her husband talked of it frequently. This witness further testifies, that her former husband, Stone, has been dead for seven years, and that she was married to her present husband on the 12th of December last.

This witness further testifies, that she bought butter and eggs from Mr. Craufurd; that he spoke of her as his wife, and sometimes called her Betsy. The witness further testified, that when she first knew her she called her Miss Betsy; and about the year 1841 or 1842 she heard she was married, and she then called her Mrs. Craufurd, and sometimes Betsy, in and out of the presence of Thomas B. Crauford. This witness being examined, further testified, that Mrs. Craufurd went to Greenwood backwards and forwards; that Mr. Craufurd took the children down on his horse before him. This witness further testified,
118 that as to saying she had never told what she said about the marriage
till yesterday, she meant that she had never told it until after she was summoned as a witness in this case; she mentioned it to the attorneys in Upper Marlborough, but that she never mentioned it to her present husband; and that she does not recollect mentioning it to Mrs. Duvall.

The plaintiff, further to sustain the issue on his part, produced Mr. Nathaniel Tucker, who being duly sworn, proves, that he now resides in Howard county; that he resided in Prince George's county until last year; and this that he lived near Mr. Thos. B. Craufurd; that he, Craufurd, told him that he was married to Elizabeth Taylor, and introduced her as his wife; that she presided at his table, spoke of her as his wife, and the children as his; that he treated them very kindly, as much so as any other father; he, the witness, called her Mrs. Craufurd. He further testified, that Thomas B. Craufurd told him the reason he did not bring his wife home was because Dr. Craufurd was living there, but that he, the Dr., was having a log cabin built, and that after Dr. Craufurd left Greenwood he brought her home.

This witness further testified, that he was overseer for Dr. David Craufurd; that Mr. Thomas B. Craufurd's children used to go by his house to school; Dr. Craufurd saw the children coming home, and asked him whose they were; he, the witness, told him that some were his, and some Mr. Thomas Crau-
119 furd's; Dr. Craufurd then said, By G-d, think of Thomas Craufurd throw-
ing himself away with a dirty poor woman. This witness further testified, that he sold turkeys to Thomas B. Craufurd; Mrs. Craufurd gave money, at his request, to pay for them; they often rode out together, and she presided at his table.

This witness further testified, that when Dr. Craufurd's house burnt down, he went to live with Thomas B. Craufurd. He further testified, that the first conversation with Thomas B. Craufurd, in which he spoke of his marriage, was before Dr. Craufurd left his house; he, the said Thomas B. Craufurd, said that he did not want his marriage talked of; he did not want Dr. Craufurd to know it until he left his house. This witness, upon cross-examination, testified, that the conversation with Dr. Craufurd, while living at his new house, mentioned to Brashears and his brother, was on the first of January or February. The witness does not recollect having mentioned it before Dr. Craufurd's death.

The plaintiff, further to sustain the issues on his part, produced William H. Wilson, who being duly sworn, proves that he resides in Centreville, Prince George's county; that he is a teacher of a school; has educated the children of Mr. Craufurd, possibly all. Mr. Craufurd put them there when they first came; he, the witness, called them Taylor; Mr. Craufurd made him change their names, and called them Craufurd, but assigned no reason for the change; Mr. Craufurd furnished their books. He, Craufurd, often came, sometimes twice a week, and brought the children home in his carriage; he was sometimes alone, and sometimes with Mrs. Craufurd. After she came to Greenwood, he, the said witness, was frequently there; Mrs. Craufurd presided at the table, 120 and had the management of everything. He, the said witness, further testified, that he was at a party at Montery; Mr. Craufurd was there; his treatment to Mrs. Craufurd was remarkably kind; he, the witness, saw no difference in treatment from any other man to his wife. He, the witness, further testified, that Thomas B. Craufurd had four children, viz: Sarah, George, Mary, and Victoria Ann, and that Mrs. Craufurd told him he had put the girls to a school at a Catholic asylum in Washington. Upon a cross-examination this witness testified, that Mr. Thomas B. Craufurd called her Betsy, but he always called her Mrs. Craufurd in his, Mr. Craufurd's, presence.

The plaintiff, further to sustain the issues on his part, produced John S. Suit, who being duly sworn, proves that he knew Thomas B. Craufurd all his life; that he did a good deal of business for him after his eyesight became bad, fifteen or seventeen years ago; that he saw him after the operation on his eyes; his servants were pretty bad, and some of them had stolen silver; he, the said witness, told him he ought to have some white person there, and he ought to get married. Mr. Craufurd told him he was married to Betsy Taylor, and had been married for some time, and he was soon going to bring her to his house when David Craufurd left, which he did. This witness further testified, that he bought some servants from Thomas B. Craufurd, and he told him to pay the money to his wife, which he did. This witness further testified that 121 he bought a man for his brother from Thomas B. Craufurd, and he, the witness, paid the money to his wife, by his directions; that Mr. Craufurd treated Mrs. Craufurd as any other man would his wife; that he has been at his table, and his wife presided; Thomas B. Craufurd sent the children to school. This witness further testified, that old Mrs. Craufurd lived with Thomas B. Craufurd; he has heard him say that her mind was affected; he says that he did not know Bushrod Craufurd; he died in the asylum in Baltimore. He, the witness, always called her Mrs. Craufurd in the presence of Thomas B. Craufurd.

Upon a cross-examination, this witness further testified that he frequently heard Thomas B. Craufurd call her his wife, sometimes Betsy; he does not recollect telling any one.

The plaintiff, further to sustain the issues on his part, produced James L. Brashears, who being duly sworn, proves that he knew Mrs. Thomas B. Craufurd lived with him in the year 1846; sold grain and stock, and paid the money by his direction to Mrs. Craufurd; sold two negroes, and paid the money over to the madam; she managed affairs about the house. The said witness further testified that Mr. Craufurd treated her very kindly; called the children his, and was very fond of them; sent them to school; knows he sent the carriage for them. Mr. and Mrs. Craufurd went to Washington, saw them there, and paid money to her; they rode out together. Upon cross-examination, this witness further testified, that he lived with Thomas B. Craufurd, in the year

1846; left in the year 1847, and returned in 1848; never told anybody
122 that Thomas B. Craufurd had told him that he was not married. Mr.
Bowie spoke of her as Mrs. Craufurd; may have sometimes, towards the last, called her Miss Betsy.

The plaintiff, further to maintain the issue on his part, produced James W. Lowe, who being duly sworn, testified that he knew Mr. T. B. Craufurd and Miss Elizabeth Taylor, from the time he was a small boy; when he went away she was at Montery, and when he returned home, was at Greenwood; he called her Betsy, and sometimes madam; she acted as if she was mistress; tried a pair of horses for them. Mr. and Mrs. Craufurd rode out, and when they returned Mr. Craufurd bought them. This witness further testified that Mr. Thomas B. Craufurd was shy of the Doctor; told him not to interfere with anything of his, did not wish to make him mad; was present when Mr. Suit paid money; asked if he should pay to him or his wife; this witness does not recollect the answer of Mr. Craufurd—whether he said pay to Betsy, madam, or his wife; they rode out together; he was very kind to her and the children; when she was young, she was regarded as a very beautiful woman; when he bought anything, he got the money from Mrs. Craufurd, by his directions. The transactions about the sale of negroes were 15 years ago; he called her Mrs. Craufurd.

The plaintiff, further to maintain the issues on his part, produced James J. Jarboe, who being duly sworn, testified that he resides in Prince George's
county; has been living there for twenty years; knew Mr. and Mrs.
123 Craufurd; have been at his house several times together; they were then
at a party; she was recognized as his wife; he introduced to several persons in the presence of Mr. Craufurd as Mrs. Craufurd. This witness further testified that he was postmaster before 1840; was turned out, and reappointed by Tyler. Mr. and Mrs. Craufurd often came to the post office; he has seen them pass by when Mr. Craufurd told him he was going to Washington, and often passed by for the children when going to school to Mr. Wilson. Mr. Craufurd came by church and left his wife, and came up to his house; his, the witness's, blacksmith repaired carriage, garden implements, &c., for her, and he paid for them; often spoke to his wife in his presence, and called her Mrs. Craufurd; Mr. Craufurd did not get angry at it. The witness further testified that after the removal to Greenwood, was the time they visited his house; that he presented a bill to Mr. Craufurd, and he turned to Mrs. Craufurd, and said, Betsy, we must muster the money to pay the old man. On the day fixed for payment, he heard he was ill and did not go, and then heard of his death. Mr. Craufurd invited him to a party at Monterey; he received him; was master of ceremonies; she received the ladies while living at Montery; Mr. Craufurd sent there constantly; the servants there were Mr. Craufurd's. Letters came for Mrs. E. Craufurd; he gave them to Mr. Craufurd, and he handed them over to her. Upon cross-examination, this witness further testified that he was appointed postmaster under Mr. Tyler; that letters came to the post office after Mrs. Craufurd went to Greenwood. He called her Mrs. Craufurd to her face,
but perhaps, when not present, Miss Betsy.

124 The plaintiff, further to maintain the issues on his part, produced Mrs.
Margaret Norfolk, who, being duly sworn, testified that she had been at the house of Mr. Thomas B. Craufurd; was there in January, 1848; she believes it was seven or eight o'clock at night; saw her for the first time; was introduced to her as Mrs. Craufurd; she sat at the head of the table, and Mr. Craufurd at the foot; after tea she talked with Mr. Craufurd about his children; he told her that two of them were at school; he showed their embroidery, piano, &c. This witness further testified that she left next morning, and bid Mrs. Craufurd good bye; she considered her the wife of Mr. Craufurd, and recognized her as such. This witness further testified that she saw her at a circus in Up-

per Marlborough, two or three years after the death of Mr. Craufurd; she was with Gen'l Bowie, who told her it was Mrs. Craufurd.

The plaintiff, further to maintain the issues on his part, produced William W. Fowler, who, being duly sworn, testified that he lived several years in Prince George's county; have known Mr. Craufurd since 1839; in 1843, as nearly as he can recollect, he called her Miss Betsy Taylor; Mr. Craufurd told him it was not Miss Betsy Taylor, but Mrs. Craufurd; he seemed not to like his calling her Miss Betsy; he said she was not Miss Betsy Taylor, but Mrs. Craufurd, my wife, and these are my children; once after this he called her Mrs.
Craufurd in his, Thomas B. Craufurd's, presence, and he did not dislike
125 it; he said that he was building a cider mill, and was working for Mr.
Jarboe; Mrs. Craufurd was present and two of her children; Mrs. Craufurd was in the door, and Mr. Craufurd on the steps, at Greenwood house.

The plaintiff, further to maintain the issues on his part, produced Elizabeth Craufurd, who, being duly sworn, testified that she was fifty-two years of age in January last, and that her maiden name was Elizabeth Taylor; about thirty years ago she became acquainted with Thomas B. Craufurd; she also knew Dr. Craufurd, and became acquainted with him before she knew Thomas B. Craufurd; she became acquainted with Thomas B. Craufurd while she lived with her mother, on a place rented from Misses Magruder. Her intimacy commenced with Thomas B. Craufurd at that place. She and her mother afterwards removed to Montery, a place owned by Thomas B. Craufurd, where her mother died; her step-father, who had been living at Monterey with them, left, and she and her brother continued to live there. Her eldest child was born there about twenty-eight years ago. The house at Monterey was furnished by Mr. T. B. Craufurd, as were also all the servants. Her intercourse with Thos. B. Craufurd was not commenced and assented to by her under a promise of marriage. Soon after its commencement Thomas B. Craufurd often said he would like to marry her, but owing to his family he could not marry her then. When the child Sarah was about eight months old she went to Washington city to have her christened, and also to visit her sister, Mrs. Evans, who was the wife of the sexton of St. Patrick's church, in that city; the child was christened in the church on
Sunday, after eleven o'clock service; as she went out the Rev. Mr. Fiziac,
126 who had performed the ceremony, and was one of the officiating priests
there, followed her and had a long conversation with her about the mode of her life. He told her that the salvation of her soul was of more importance to her than all things else, and that she could not be saved if she continued living in sin with Mr. Craufurd. The conversation was a long one, and at his instance she made up her mind if Mr. Craufurd would not marry her to leave him; Mr. Craufurd had sent the carriage up for her to come home; she sent it back on that Sunday evening with a request that Mr. Craufurd would come up the next day. He accordingly came up, and she had a long interview with him; she related to him what Mr. Fiziac had told her, and that the salvation of her soul was of more importance to her than all things else in this world; she must separate from him if he would not marry her. He replied that he did not know about it, but that he could not marry her unless the marriage was kept secret from his mother and his brother, Dr. David Craufurd. She assented that the marriage should be kept secret, and he then consented to marry her; she agreed that the marriage should take place the next day; on the next day, Tuesday, they went to St. Patrick's church, and were there married by the Rev. Mr. Fiziac; her sister, Mrs. Evans, and her brother, Sam. Taylor, were present; both of them are now dead; Mr. Thomas B. Craufurd returned home that
evening; she remained with her sister until the following Sunday, and
127 then returned home to Monterey in Mr. Thomas B. Craufurd's carriage.

Mr. Thomas B. Craufurd often after marriage objected to his brother, Doctor David Craufurd, knowing anything about it, for if he did, neither he nor

34 his children would ever get a cent of his, Dr. Craufurd's, property. Her children, George and Victoria, were born after the marriage; George was born some ten or twelve months after it. From the time of the marriage she and Thomas B. Craufurd lived together as man and wife—about four years and a half before the death of Thomas B. Craufurd. He took her and the children to live with him at Greenwood, the place where the Craufurd family had been living; she took charge of the house at Greenwood, and sat at the head of the table; she made purchases for the family, and at the request of Mr. Craufurd kept his money. She always kept the marriage secret, and never disclosed it until after the death of Dr. David Craufurd; she then disclosed it to Mr. William Hill, who called upon her and asked her about it; he told her he had heard it rumored, and wanted to know the facts from her; she then, for the first time, told all about it to him. Mr. Thomas B. Craufurd was always very kind to her; he sent the children to school, first to Wilson, and afterwards sent the girls to Washington; the school bills were paid by him through her; he gave her the money to pay them; she also frequently purchased goods for the family in Washington and elsewhere; when she went to Washington she went in Mr. Craufurd's carriage, and he occasionally went with her. When she first
128 went to Greenwood, Dr. David Craufurd came there more frequently than afterwards; she always avoided him when he came, because she knew his dislike to her and the children. Dr. Craufurd ceased visiting Greenwood for some time before the death of Mr. Craufurd, and was not there when he died. She was with Mr. Craufurd at the time of his last attack; he was first attacked on the front porch at Greenwood; while in the act of stooping to wash he fell; she was close by in the house, and was the first one to get to him; this was about 6 o'clock a. m.; he was carried into the house and placed upon a bed, and a physician immediately sent for. He rallied partially about one o'clock, and called for Boss; the child was handed to him, but he soon relapsed, and did not again revive that she saw before his death. Boss was the nickname by which he called George T. Craufurd, our child.

When cross-examined, this witness further testified that it was over a month after the death of Dr. Craufurd when she communicated her marriage to Mr. William Hill; that she had never before that time told the marriage to any person at all; nor did she tell Mrs. Boone, Thomas Talbert or Miss Mary Warring that she was not married. She never heard Mr. Craufurd introduce her as his wife; he did introduce her to strangers, but how he introduced her she does not remember. She did not visit with Mr. Craufurd in the families of the large landed proprietors in the neighborhood, as Drs. Lee and Boyle; when visiting she was sometimes called Mrs. Craufurd and sometimes Miss Betsy Taylor.
129 In the family of Mr. Judson Jarboe she was addressed as Mrs. Craufurd. Her first intimacy commenced with Mr. Thomas Craufurd about thirty years ago, and it was not under the promise of marriage; about two years after its commencement she went to Monterey. She had six children; the oldest and the youngest are dead, and both died in the lifetime of Thomas B. Craufurd; the oldest was born in June and died in August. At the time of her marriage she stayed at her sister's, Mrs. Evans. Thomas B. Craufurd did not stay there with her. He told her he stayed at Brown's Hotel.

The plaintiff, to maintain the issues on his part, produced the Rev. Mr. Boyle, who, being duly sworn, testified that he was the assistant priest at St. Patrick's church, in Washington city; that Mr. Walter is the chief pastor; that he has been there for seven years; that the church record of marriages, as far as he has been able to find any, commenced in 1848; baptismal records in 1823; he reads from the record: Sarah Jane, natural child of Elizabeth Taylor, born 31st December, 1834, and baptized 30th of August, 1835; sponsor, Sarah Evans. (Admitted that Mr. Fiziac was at St. Patrick's church on 30th of August, 1835, as a priest and pastor.) If the entry was the child of Thomas B. Craufurd and Elizabeth Taylor, it would indicate the child was legitimate.

Upon cross-examination, this witness further testified that there is no disciplinary order of the church *of the church* of having licenses, but as the ministers are law-observing men, they generally require the license.

Upon re-examination this witness further testified that Mr. Thomas
130 F. Bowie first called upon him; applied last week; came with Mr.
McNamee; would marry, under the circumstances, without license.

The plaintiff, further to maintain the issues on his part, produced Nathaniel Suit, who, being duly sworn, testified that he has known Mr. T. B. Craufurd about forty years; he was a son of Nathaniel Craufurd; he lived at Greenwood; Nathaniel Craufurd married Miss Blackburn, of Va.; Mr. Craufurd was deranged; Blackburn Craufurd was also deranged, and he carried him to the hospital; Nathaniel died in some queer way, whether from drink or not he does not know. He, the witness, further stated that no member of the Craufurds deranged before intermarriage with the Blackburns. He further states that George T. Craufurd is the only male descendant on the part of the Craufurds from the grandfather, Nathaniel Craufurd, now living: Mrs. Craufurd came to Greenwood about a year after the operation on Mr. T. B. Craufurd's eyes; (went there in 1844;) he, the said witness, was the agent of Mr. Craufurd out of doors; he had to stay by his bedside; he told Craufurd he ought to bring the madam home; he said that Dr. David Craufurd would raise the devil if he did; but as soon as he could get rid of Dr. David Craufurd he would bring her home; he said that he did not like to talk of his being married; told him he had been married for some years; may have eight, or ten, or seven years, to Elizabeth Craufurd; he often spoke of his marriage to him, the witness; treated her in the same manner at Monterey as at Greenwood; paid money to him and sometimes to her by his directions; she would sometimes
chastise (scold) him about having too many friends around him. The
131 witness further stated that he had been at Monterey with Mr. T. B.
Craufurd; that he seemed very fond of his wife and children; got money from her; she kept the money generally.

Upon cross-examination this witness further testified that he might have said to Gen'l Bowie there is no use to summon him down there; that he knew nothing about the matter; never said to Gen'l Bowie that Thomas B. Craufurd and Elizabeth Craufurd were not married; never told Gen'l Bowie that T. B. Craufurd got mad because he had advised Mr. Craufurd to marry Elizabeth Taylor, for he had advised him to marry, and he, Mr. Craufurd, replied they were married; proposed to draw notes to give some of the children more than the others by notes; did not finish execution of these notes; does not know what has become of them; Mrs. Norfolk is the first-cousin to George T. Craufurd's wife.

Upon re-examination this witness further proved that Thomas B. Craufurd said that Betsy and the children were provided for by law.

The plaintiff, further to maintain the issues on his part, produced Charles Rigeway, who, being duly sworn, testified that he knew Thomas B. Craufurd from the year 1845; Mrs. Craufurd he knew from the same time by sight, not personally; has seen her passing in the carriage frequently with him; has seen them frequently passing along the road together to the post office and to schoolhouse for the children.

The plaintiff, further to maintain the issues on his part, produced James Duckett, who, being duly sworn, testified that he lived formerly in Prince George's county, with Mrs. Cain Bowie, at Willow Brook; he knew Thomas B. Craufurd and Mr. Craufurd, but not as Mrs. Craufurd; saw her at Greenwood, passing through the house; she appeared to have charge of the house; he has no personal acquaintance with her.

Upon re-examination the Rev. Mr. Boyle testified that if persons liv-
4 132 ing together, and passing as man and wife, were discovered not to be man
and wife by him, as a minister he would marry privately and without license, to avoid scandal; the book shown is the baptismal register of St. Patrick's church for the year 1837 and 1838. He reads: "1837, July 30th, George Thomas, son of Thomas Craufurd and Elizabeth Taylor, his wife, born 7th September, 1836. Sponsors, John and Sarah Evans."

And the plaintiff here rested his case.

Whereupon the defendant, to sustain the said issues on his part, produced Francis M. Bowie, a competent witness, who, being duly sworn, proved that he was acquainted with the said Thomas B. Craufurd, dec'd, in his lifetime, and for many years before his death, and was frequently at his house in his lifetime; and that the defendant asked the said witness whether, on the occasion of any of the said visits to the house of the said Craufurd, he, the said Craufurd, made any statement to him in regard to the character of the intercourse existing between him, the said Craufurd, and Elizabeth Taylor aforesaid; and the said defendant, on being required so to do, stated that in the event of an affirmative answer to said question, he proposed to ask the said witness whether on such occasion anything was said about a marriage between the said Craufurd and the said Taylor, and to state all the declarations made by the said Craufurd on that occasion.

Whereupon the plaintiff objected to the question so put to said witness; but the court overruled said objection, and permitted the said question to be asked of the said witness, and to be answered by him.

And thereupon the witness stated that he had such conversation with said Thomas B. Craufurd on the subject of his intercourse with said Eliza-
133 beth; and thereupon the said defendant, by his counsel, offered to prove
by said witness that after the year 1837 the said Thomas B. Craufurd had declared that he was never married to the said Elizabeth Taylor, and that his children by her were illegitimate.

But the counsel for the plaintiff objected to the admissibility of said proposed evidence, or to the said question being put to the witness. The court overruled the said objection, and permitted the said question to be put and answered by the said witness, and the said evidence to go to the jury.

To which ruling of the court, and to their permitting the said evidence to go to the jury, the plaintiff, by his counsel, excepted, and prayed the court to sign and seal this bill of exceptions, which is done this 21st of May, 1860.

PETER W. CRAIN. [SEAL.]

Circuit court for Charles county.

George T. Craufurd
vs. } Issues.—Fourth exception.
Richard S. Blackburn.

After the ruling of the court, as stated in the preceding exception, which is to be taken as a part of this exception, the defendant, further to maintain the issues on his part, proved by the said Francis M. Bowie that he knew Thomas B. Craufurd prior to the year 1835; and from the year 1835 up he was frequently at his house, by invitation and otherwise; was on very intimate terms with him subsequent to the *the* year 1837; called in at the said Craufurd's when the said T. B. Craufurd asked him if he had any objection to ride by Monterey, where Betsy Taylor resided; on this occasion he told him to consummate the union by marrying, on account of the respectability of his chil-
dren; he said he never had married, and never would; he said nothing
134 on that occasion about the disposition of his property; he does not know
that the subject was ever referred to between the said Craufurd and

himself; he said that Betsy moved down to Greenwood in the year 1843 or 1844; he was at Greenwood after the year 1844, but not so frequently as before that time; had seen Betsy there when he carried a negro home on one occasion; Craufurd said the offence of the nigger was against Miss Betsy; he asked her to overlook the offence; she said she would; he called her Miss Betsy on another occasion he dined there; Betsy was at the table; he always addressed her as Miss Betsy. This witness further stated that when he first knew Miss Betsy she lived on Mrs. Louisa Magruder's place; he recollects going with Thomas B. Craufurd, whose eyes were bad, to Bladensburg; at his request said Craufurd told the witness he was going there to attend a trial; he had been warranted for a claim against Elizabeth Taylor; he does not know in whose favor; the witness does not think the case was tried on that day; he cannot fix the time.

Upon cross-examination this witness testified that he knew Dr. Craufurd very well; was an intimate associate of his; it was in the year 1837 that this conversation took place about marrying Betsy Taylor; recollects saying at his father's table, five or six weeks ago, that he had understood that some gentleman said he had to wait for dinner because his wife was at church and could not have dinner until she returned; he never said he was there upon that occasion, and pronounced it false; he has no recollection that he ever said Thomas B. Craufurd told him that he was or was not married; he may have said he called her Betsy or Miss Betsy; he was as intimate with Thomas B. 135 Craufurd as any of his family; he called him champion because he killed more birds than any one else; he has never heard Thomas B. Craufurd apologise for a late dinner on account of the absence of his wife.

The defendant, further to maintain the issues on his part, proved by Nicholas C. Stephen that he recollects being at a trial in Bladensburg in the year 1845. He acted as counsel on that occasion. Thomas B. Craufurd and Mrs. Craufurd came up together. The trial was had. In the course of it Mr. Dorsey remarked that he was bound legally and morally to pay the claim of Betsy Taylor. Craufurd became violent and indignant, and made at Dorsey with a cane, but was prevented by others from injuring Dorsey. He called her, when dining at Craufurd's house, Miss Betsy; never addressed her in any other way.

The defendant, further to maintain the issues on his part, proved by Thomas Talbert, who, being duly sworn, testified that he knew Mrs. Craufurd in the year 1849. He called her Mrs. Craufurd. She said he must not call her Mrs. Craufurd; she had never married a Craufurd, and wished she never had seen one. The witness further said that no one was present who is now alive. Knew Dr. Craufurd; lived close by him in 1849; never saw Betsy Taylor until after T. Craufurd's death; never told him, before that time, to call her Mrs. Craufurd; made no contradictory statements since, in Port Tobacco, to other persons; after she told him, he called her Miss Taylor.

The defendant, further to maintain the issues on his part, proved by Dr. Sheehy that he had a conversation with Nathan Tucker; he commenced the conversation himself; said he did not think Thomas Craufurd and Elizabeth Taylor were married; if he was sworn he would say so; asked H. J. Ball if he thought so; Ball said not; he said he thought not, too. The witness 136 says he has taken no part in the case; that he went with Dr. Blackburn to show him where Duvall lived; told Dr. Blackburn that he was going that way, and, being acquainted with the neighborhood, and would show him certain houses where witnesses he wanted to see lived.

The defendant, further to maintain the issues on his part, proved by Henry J. Ball, who, being duly sworn, testified that he was present at a conversation between Dr. Sheehy and Tucker, at Mrs. Brookes's; Tucker said, I never believed they were married, and asked witness whether he believed they were married, and witness answered that he never did, and said Tucker said they

never were married. The witness said he had lived in the neighborhood; that if anything of the kind had happened he would have heard; he said she had a child which laid between him (witness) and Vermillion; his first wife was a cousin of Betsy's; knew her since 1825; she lived on Miss Louisa Magruder's land at that time; he lived with Thomas B. Craufurd as overseer in the year 1824, '5, '6, '7,–'39; was intimately acquainted with Betsy Taylor; visited his house; saw her frequently in 1839; called her Miss Betsy; never called her anything else; Thomas Craufurd called her Miss Betsy in the year 1839; her relations never did believe she was married to Thomas Craufurd; such was the general reputation of her family; always went by the name of Betsy Taylor; Mr. Cox and Mrs. Cox died 6 and 10 years ago; her manner of living they considered as throwing herself away by living so; was not sent off by Betsy Taylor's influence, and never said so; Tucker introduced the subject;
137 there was a broad foundation for the charge that Tucker brought.

The defendant, further to maintain the issues on his part, proved by Dr. Boyle, who, being duly sworn, testified that he knew Thomas B. Craufurd since the year 1841 to the time his death; that he attended his family until the year 1845; in the year 1844 he attended him for paralysis; during his sickness he desired to see his children, and insisted several days in succession; he advised him to send for them; said if he did David never would forgive him, and after that he did send for them; he wanted careful nursing, and he thought she was a good nurse; his physical condition was very infirm; never recovered from this attack; saw her there afterwards; always called her Miss Betsy, as did himself; has seen her at the head of his table; his bed-room was down stairs; appeared as if he layed there alone; attended him in his last sickness.

The defendant, further to maintain the issues on his part, proved by Dr. Benjamin Lee, who, being duly sworn, testified that he knew Thomas Craufurd intimately from the year 1818 to his death; he practiced in his family from the year 1835 to 1848; attended Betsy Taylor; she lived at Monterey; moved to Greenwood in 1844; he always called her Miss Betsy Taylor; never knew her by any other name up to March, in the year 1848; Thomas Craufurd called her Betsy; lodged down stairs; saw Miss Betsy up stairs when he attended her; never saw anything to convince him that he did not lodge alone. Dined there with invited company since 1844; she did not preside at the table at that time; he saw her passing about the house at the time; does not know whether they were married or not; never heard anything on the subject; does not think there was any good feeling between Dr. Craufurd and Thomas Craufurd; never saw any ladies at Greenwood.

And then the defendant, further to maintain the said issues on his part,
138 offered to read to the jury a copy of the last will and testament of the said Thomas B. Craufurd, with the probate thereof, as follows:

In the name of God, amen. I, Thomas B. Craufurd, of Prince George's county, in the State of Maryland, being apprehensive of death, but of sound and disposing mind, memory, and understanding, and being anxious, before I die, to settle and dispose of all my estate by last will and testament—

In the first place, I desire all my just debts and funeral charges to be paid by my executor, hereinafter named, and after their payment I will and devise as follows:

I will, devise, and give unto George Thomas Craufurd, my natural son by Elizabeth Taylor, now about 8 years old, the one-half of my entire landed estate, to be laid off to him so as to include the dwelling-house, and all the outhouses attached thereto, at Greenwood, wherein I now reside, to him, the said George T. Craufurd, his heirs and assigns, in fee simple forever.

Also, I will and give the other moeity, or half of all my landed estate, to Mary Elizabeth Craufurd, Sarah Jane Craufurd, and Anna Victoria Craufurd, my natural children, and daughters by the said Elizabeth Taylor, to be equally divided between them, share and share alike, to them, their heirs and assigns, forever, as tenants in common. I give and bequeath unto the said George Thomas Craufurd, my aforesaid son, the other half of all my negroes and other personal estate, of every description whatever, including debts due me, and every other description of personal property whatever, to him, the said George Thomas Craufurd, his executors, administrators, and assigns.

139 The other half of my negroes and other personal estate, of every description as aforesaid whatever, I give and bequeath unto the aforesaid Mary Elizabeth Craufurd, Sarah Jane Craufurd, and Anna Victoria Craufurd, my aforesaid natural children, and daughters by the said Elizabeth Taylor, to be equally divided among them, share and share alike.

And whereas, in all probability, the said Elizabeth Taylor may be now pregnant with child by me, I further will and devise that, in case such child shall be born after my death, that then, and in that event, said child shall have an equal share with my aforesaid daughters in all that half of my real and personal estate which I have hereinbefore devised and bequeathed to them.

I further will and devise, and do hereby direct, that Elizabeth Taylor, the mother of my aforesaid children, shall live and have her home at Greenwood, with the aforesaid children, so long as she shall live single and unmarried.

And lastly, I do hereby constitute and appoint my friend Thomas J. Bowie to be sole executor of this my last will and testament, and guardian to my aforesaid children, for and until they shall respectively arrive at full age.

In testimony whereof, I have hereunto set my sign and mark, not being able to write my name in consequence of a paryletic attack in my right arm, by which I have lost the use of it, and affix my seal, this twenty-second day of July, in the year of our Lord one thousand eight hundred and forty-four.

his
THOS. + B. CRAUFURD. [SEAL.]
mark.

Signed, sealed, published, and declared, by Thomas B. Craufurd, as and for his last will and testament, in our presence; and at his request, in his
140 presence, and in the presence of each other, we have subscribed our names as witnesses thereto.

BENJA. L. GANTT.
W. BOWIE BROOKE.
G. B. STONE.

PRINCE GEORGE'S COUNTY, *sct.—April* 4, 1848:

Then came Benja. L. Gantt and George B. Stone, two of the subscribing witnesses to the within will of Thomas B. Craufurd, late of said county, deceased, and made oath on the Holy Evangely of Almighty God that they did see the testator herein named sign and seal this will, and heard him publish, pronounce, and declare the same to be his last will and testament; that at the time of his so doing he was, to the best of their apprehension, of sound and disposing mind, memory, and understanding, and that they, together with W. Bowie Brooke, the other subscribing witness, respectively, subscribed their names as witnesses to this will, in the presence of the testator, at his request, and in the presence of each other.

Sworn before— JAMES HARPER,
Reg. of Wills for P. Geo. County.

PRINCE GEORGE'S COUNTY, *sct:*

I, William A. Jarboe, register of wills for the county aforesaid, in the State of Maryland, do hereby certify that the aforegoing is a true copy of the last will and testament of Thomas B. Craufurd, late of said county, deceased, duly proved according to law, and now upon record and remaining in my office.

141 In testimony whereof, I hereunto set my hand and affix the seal of the orphans' court for Prince George's county, this 12th day of January, A. D. 1860.

WILLIAM A. JARBOE,
Reg. of Wills for P. Geo. County.

For the purpose of showing the solemn declarations of said testator touching the illegitimacy of his said children, to which the plaintiff objected.

But the court overruled said objection, and permitted said copy to be read to the jury, and it was read accordingly; to which ruling of the court the plaintiff excepted, and prayed the court to sign and seal this his bill of exceptions, which is accordingly done this 21st day of May, 1860.

PETER W. CRAIN. [SEAL.]

And thereupon the said plaintiff, by the attorneys aforesaid, prays an appeal from the judgment of the court here so as aforesaid rendered to the court of appeals of the State of Maryland, and to him it is granted; in pursuance whereof, and according to the form and effect of the act of assembly in such case made and provided, the record and proceedings aforesaid, with all things thereunto relating, are transmitted to the said court of appeals of the State of Maryland accordingly.

Test: P. W. CRAIN, *Clerk.*

STATE OF MARYLAND,
Charles County, sct:

I hereby certify that the aforegoing is truly taken from the records of the proceedings of the circuit court for Charles county.

Circuit court for Charles
[SEAL.]
county, Maryland.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the circuit court for Charles county this sixteenth day of December, anno Domini one thousand eight hundred and sixty.

P. W. CRAIN, *Cl'k.*

142 And now come into the court of appeals here, as well the said George T. Craufurd, by Thomas G. Pratt and Robert J. Brent, esqrs, his attorneys, as the said Richard S. Blackburn, by Thomas L. Alexander and C. C. Magruder, esqr., his attorneys; and thereupon, on motion of the said Richard S. Blackburn, by his attorneys aforesaid, it is ruled by the court here that the said George T. Craufurd assign the errors in the record of proceedings aforesaid, or in the giving the judgment aforesaid, so as aforesaid brought before the court of appeals here for correcting the errors supposed to be therein, or judgment by the court of appeals hereunto be entered against him in default thereof.

And the said George T. Craufurd, by his attorneys aforesaid, says that in the record of proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in the plea aforesaid given, was given for the said Richard S. Blackburn, against the said George T. Craufurd, when by the law of the land that judgment ought to have been given for the said George T. Craufurd against the said Richard S. Blackburn; therefore in that there is manifest error, and he prays that the judgment aforesaid for that error and others, being in the record of proceedings aforesaid, may be reversed, annulled, and held entirely as void; and that the said George T. Craufurd may be restored to all things which he hath lost by occasion of the said judgment, and that the said Richard S. Blackburn may rejoin to the error aforesaid, and so forth.

143 And thereupon it is ruled by the court of appeals here that the said Richard S. Blackburn may join to the errors aforesaid by the said

George T. Craufurd, above assigned in the record of proceedings, or judgment by the court of appeals here will be rendered against him in default thereof.

And the said Richard S. Blackburn, by his attorneys aforesaid, says there is no error in the record of proceedings aforesaid, nor in the giving of the judgment aforesaid; and he prays that the court of appeals here will proceed to the examination as well of the record of proceedings aforesaid, as of the matter aforesaid by the said George T. Craufurd above for errors assigned, and that the said judgment may be in all things affirmed, and so forth.

Whereupon, as well the record and proceedings aforesaid, and the judgment given in form aforesaid, as the matter aforesaid by the said George T. Craufurd above for error assigned being seen, and by the court here fully understood, and mature deliberation thereon had, for that it appears to the court of appeals here that there is no error in the record of proceedings aforesaid, nor in the giving of the judgment aforesaid; therefore it is considered by the court of appeals here that the judgment aforesaid, given in form aforesaid, be in all things affirmed and stand in full force and effect, the said causes for error above assigned and alleged in anywise notwithstanding; and it is further considered by the court of appeals here that the said Richard S. Blackburn have execution against the said George T. Craufurd, as well for the sum of one hundred and seventy-two dollars and forty-six cents costs and charges aforesaid, adjudged unto him in the said circuit court for Charles county, as also the sum of
144 eighty dollars and ninety-two cents adjudged unto the said Richard S.
Blackburn by the court of appeals here, on his assent for his costs and charges which he sustained by occasion of the delay of the execution of the judgment aforesaid by pretext of the prosecution of the said appeals by the said George T. Craufurd for the correcting of errors of and upon the premises as aforesaid prosecuted, &c.

Memorandum.—Judgment was affirmed in this case on the first day of March, eighteen hundred and sixty-two, and execution awarded for the sum of one hundred and seventy-two dollars and forty-six cents costs in the circuit court, and eighty dollars and ninety-two cents costs in the court of appeals.

MARYLAND, *sct:*

I, William A. Spencer, clerk of the court of appeals, Maryland, do hereby certify that the aforegoing is truly taken from the proceedings of the said court of appeals.

{ Court of appeals } In testimony whereof, I hereunto subscribe my name as
{ [SEAL.] } clerk, and affix the seal of the said court of appeals, this fifteenth day of March, in the year of our Lord one thousand eight hundred and sixty-one.

WM. A. SPENCER.
Clerk Co't of Appeals of Maryland.

STATE OF MARYLAND, *Prince George's County, to wit:*

The aforegoing record and proceedings from the court of appeals of
145 the State of Maryland having been filed in the office of the register of
wills for Prince George's county, and upon application of Richard S. Blackburn, the orphans' court for said county passed the following order.

ORPHANS' COURT, *March* 23, 1861.

GEORGE T. CRAUFURD }
vs. }
RICHARD S. BLACKBURN. }

Ordered by the orphans' court of Prince George's county, that Richard S. Blackburn be, and is hereby, appointed administrator of David Craufurd, late of

4

said county, deceased; he executing a bond to the State of Maryland in the penalty of two hundred thousand dollars, with such securities as shall be approved by said court.

WM. B. HILL, *C. J.*
WM. R. BARKER, *A. J.*

The bond required by the above order has been given and approved by the orphans' court of Prince George's county this 23d day of March, 1861.

WM. B. HILL, *C. J.*
WM. R. BARKER, *A. J.*

STATE OF MARYLAND, *Prince George's County, sct:*

I, William A. Jarboe, register of wills for Prince George's county, in the State of Maryland, do hereby certify that the aforegoing is a full transcript from the record, in my office, of all the proceedings of the orphans' court, Prince George's county, including the application for and grant of letters of administration to Richard S. Blackburn, on the personal estate of and effects of Dr. David Craufurd, late of said county, deceased.

In testimony whereof, I hereunto set my hand and affix the seal of the orphans' court of Prince George's county this 28th day of December, A. D. 1861.

Test: WM. A. JARBOE,
Register of Wills for P. G. County.

146 I, William B. Hill, chief judge of the orphans' court for Prince George's county, in the State of Maryland, do hereby certify that the aforegoing attestation of William A. Jarboe, register of wills for said county, is in due form and by the proper officer.

Given under my hand, at the town of Upper Marlborough, this 28th day of December, in the year eighteen hundred and sixty-one.

WM. B. HILL,
Chief Judge for the Orphans' Court for P. G. County.

STATE OF MARYLAND, *Prince George's County, sct:*

I, William A. Jarboe, register of wills for Prince George's county, in the State aforesaid, do hereby certify that Wm. B. Hill, whose signature is attached to the aforegoing certificate, is genuine; and that at the time of his signing the same he was acting as chief judge of the orphans' court for Prince George's county, in the State aforesaid, duly commissioned and qualified.

In testimony whereof, I hereunto set my hand and affix the seal of the orphans' court of Prince George's county this 28th day of December, A. D. 1861.

Test: WM. A. JARBOE,
Register of Wills for P. G. County.

149 But the plaintiff objected to the admissibility of the said offered evidence; and the court being of opinion that the same was inadmissible for any of the purposes indicated by the defendant, refused to permit the said verdict and order to be read in evidence to the jury; to which ruling of the court, and to the exclusion of the said offered evidence, the defendant excepted; and this his bill of exceptions is thereupon signed, sealed, and enrolled this third day of December, 1862.

WILLIAM F. GILES. [SEAL.]

5

CRAUFURD'S LESSEE
vs. } 5th exception.
BLACKBURN.

After the evidence in the preceding bills of exceptions, (which is by agreement made part of this bill of exceptions,) the defendant, further to maintain the issue on his part, offered to read in evidence to the jury the following deposition of Reverend Timolean Fiziac, to wit:

Circuit court of the United States, 4th circuit and district of Maryland.

JOHN DENN, LESSEE OF GEORGE T. CRAUFURD and others }
vs.
RICHARD S. BLACKBURN. }

Interrogatories on the part of the defendant to be propounded to Reverend Timolean Fiziac, now residing in France:

1st. What is your profession, occupation, or employment?

150 2d. If you answer that you are a priest in communion with the Roman
Catholic church, then say for how many years you have been thus in
communion with said church.

2d. Were you or not, in the year 1835, or thereabouts, officiating in St. Patrick's church, in the city of Washington, as pastor, associate pastor, or priest in charge of, or officiating in said church? and if yea, then state what was your certain relation towards said church; when did it commence; and when was it terminated.

3d. If, in answer to the last preceding interrogatory, you shall say that you were officiating in religious orders at or in the said church during or in the year 1835, then answer, did you or did you not, at any time during the months of July, August, or September, in the said year 1835, celebrate the rights of marriage between Thomas B. Craufurd, of Prince George's county, Maryland, and Elizabeth Taylor, of said county and State. Answer this question according to your recollection and belief, and with such explanation (if any) as you may think necessary.

4th. Was or not any register kept or made of marriages celebrated at the said church, or by the priest officiating at said church, during the months of July, August, and September, 1835? If yea, then say what has become of said register.

5th. If you shall say, in answer to the last interrogatory, that a register of
marriages so celebrated was made, and that the same is in your possession, then
produce said register before the commissioner. Inspect the said register, and
especially those parts thereof which contain certain entries of marriages celebrated
in the months of July, August, and September, 1835, and state whether
151 or not there is in said register any entry of or relating to a marriage between the said Thomas B. Craufurd and the said Elizabeth Taylor.

6th. State whether the said register book is a book properly belonging to the said church, or is a private memorandum book of your own order; and if you have no objection to part with the possession of the said book, be pleased to deliver it to the commissioner, to be returned with the commission.

7th. At the time you officiated in said church (if, in answer to the preceding interrogatories, you shall have stated that you did officiate therein) were you or not aware of the law of the said city of Washington requiring parties who proposed to contract matrimony together to obtain a public license for that purpose; and were you or not in the habit of requiring such license from parties who desired you to celebrate the rights of marriage between them.

8th. Did you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination on the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

THO. L. ALEXANDER,
For Defendant.

Cross-interrogatories to be propounded to the Rev'd.

1. State where you were born, and your present age.

2. If you state that you resided in Washington city in 1835, say 26 years
ago, please also state in what year you left Washington, and when you left
the United States, and in what countries and places you have resided
152 since, and in what capacity, profession, or business you have been en-
gaged since 1835 hitherto.

3. State how many marriages you have celebrated in your life, and how many since 1835, as nearly as you can recollect, and especially state whether you can recall the names of those whom you have thus married by means of your power of memory, unaided by memorandum.

4. What acquaintance had you with Thomas B. Craufurd, of Prince George's county, Maryland, and how often, and where, and on what occasions have you seen and conversed with him?

5. What was your acquaintance with Elizabeth Taylor, the sister of Mrs. Evans, who was the wife of the sexton, Evans, in Washington city, and how often, and where, have you seen said Elizabeth Taylor; and especially state whether you ever saw her with Thomas B. Craufurd, and whether you ever baptized or christened any of her children, giving their names, and the years in which they were baptized or christened.

6. If you baptized or christened any child or children of said Elizabeth Taylor, state whether you kept any record or memorandum in which said baptism or christening is entered; and if so, produce the same if in your possession; and if not, state where the same is, and especially state whether you entered her said child or children as natural or illigimate child of Elizabeth Taylor, or as the child of Thomas B. Craufurd and Elizabeth, his wife.

7. State whether or not a marriage record was not kept at St. Patrick's
church, in Washington city, during the year 1835; and if so, state whether
153 you carried said record with you —— left Washington; and if not, where
and in whose charge was it kept, and describe the size and appearance
of said record, and state whether you can now recollect all the names recorded
therein, and especially whether the names of Thomas B. Craufurd and Elizabeth
Taylor are not therein recorded.

8. If you have any memorandum in your possession and now produced, state whether the same is the official record book of marriages kept at St. Patrick's church, and how late it bears date; and if said memorandum is not the official record kept in said church, then state whether you can identify the same as a faithful copy from said record book made by yourself without any addition or omission; and especially state whether you can particularly swear that said memorandum produced by you contains each and every entry of marriages made in the official record book while you were at St. Patrick's church.

9. State whether you would not have celebrated a secret marriage between parties living to your knowledge in sin, one or both of whom would only be married on the condition that such marriage was to be kept secret.

10. Are you aware that the penalty on a minister for marrying parties in Washington without a license was merely a pecuniary fine.

11. Have you ever heard Sarah Evans, now deceased, say that her sister Elizabeth had married Thomas B. Craufurd, or any one else? and if so, state when, and what she said.

The Sarah Evans referred to was the wife of the sexton of the church.

ROBERT J. BRENT,
ADAM H. BERRY,
THOMAS G. PRATT,
For Pl'ffts.

154 Circuit court U. S., 4th circuit and district of Maryland.

George T. Craufurd and others, lessee,
vs.
Richard S. Blackburn.

It is agreed that a commission, issue to James Lesley, junior, the American consul elect for Lyons, France, to take the testimony of witnesses in this cause.

THO. L. ALEXANDER, *for Defendant.*

Provided, before proceeding, the said James Lesley shall qualify himself by taking the oath in said commission stated, and shall successively propound each and every interrogatory and cross-interrogatory to said witness, (Rev'd Timolean Fiziac,) and reduce his sworn answers thereto to writing, and provided no other questions shall be propounded to said witness than the written interrogatories aforesaid, and that the answers and interrogatories be all carefully enclosed in a seal envelope, and addressed to the clerk of the circuit court of the United States, Baltimore, Maryland.

R. J. BRENT, *for Plaintiff.*

The United States of America,
District of Maryland, to wit:

To James Lesley, jun'r, the American consul elect for Lyons France, esq'r, greeting:

Be it known that you are appointed commissioner to examine evidences
155 in a case now depending in the circuit court of the United States for the 4th circuit, in and for Maryland district, between John Denn, lessee of George T. Craufurd and others, plaintiff, and Richard S. Blackburn, defendant. Therefore you are required, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that at such time and place as to you shall seem convenient, you cause to come before you all such evidences as shall be named or produced to you by either the plaintiff or defendant, and that you examine them upon their corporal oaths, to be by you administered upon the Holy Evangely of Almighty God, touching their knowledge or remembrance of anything that may relate to the cases aforesaid; and having reduced the depositions of the witnesses so taken by you into writing, you send the same with this commission, closed under your hand and seal, to the said circuit court with all convenient speed.

Witness the honorable R. B. Taney, chief justice of our Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty.

J. L. A.—Issued 13th day of June, 1861.

THO. SPICER, *Cl'k Circ't C't.*

Commissioner's oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now or which may hereafter, before the said commission is closed, be produced to and left with you by either party: so help you God.

156 *Clerk's oath.*

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, and transcribe the depositions of all and every the witness and witnesses produced before and examined by the commissioners named in the commission hereunto annexed, as far forth as you are directed and employed by the said commission to take, write down, and transcribe the said depositions, or any of them: so help you God.

George T. Craufurd and others }
vs. } Commission.
Richard S. Blackburn. }

The execution of this commission appears in a certain schedule hereunto annexed.

JAMES LESLEY. [seal.]
Commissioner.

This commission, directed to my son James, and transferred to me by the commission directed to me, and hereunto annexed, was executed at the convent of the Sisters of St. Joseph de Clany, at Limosin, France, and not at Carcasonna, the place of residence of the Reverend Timoleon Fiziac, for the reason stated in the endorsement upon said commission directed to me, and hereunto annexed.

Lyons, October 18, 1861.

JAMES LESLEY, *Commissioner.*

Witness in:
Louis N. Wrother, *U. S. Consul.*

157 Circuit court of the United States, 4th circuit and district of Maryland.

John Denn, Lessee of George T. Craufurd, }
vs. }
Richard S. Blackburn. }

Interrogatories, on the part of the defendant, to be propounded to the Reverend Timoleon Fiziac, now residing in France:

1st. What is your profession, occupation, or employment? If you answer that you are a priest in communion with the Roman Catholic church, then say for how many years you have been thus in communion with said church.

2d. Were you or not, in the year of 1835, or thereabouts, officiating at St. Patrick's church, Washington city, as pastor, associate pastor, or priest, in charge of or officiating in said church? and if yea, then state what was your certain relation towards said church; when did it commence, and when was it terminated.

3. If, in answer to the last preceding interrogatory, you shall say that you were officiating in religious orders at or in said church during or in the year 1835, then answer, did you or did you not, at any time during the months of July, August, or September, in the same year 1835, celebrate the rights of marriage between Thomas B. Craufurd, of Prince George's county, Maryland, and Elizabeth Taylor, of said county and State? Answer this question according to your recollection and belief, and with such explanations, if any, as you may think necessary.

4. Was or not any register kept or made of marriages celebrated at the said church, or by the priest officiating at said church, during the months of July, August, and September, 1835? If yea, then what has become of said register?

158 5. If you shall say, in answer to the last interrogatory, that a register

of marriages so celebrated was made, and that the same is in your possession, then produce said register before the commission, inspect the said register, and especially those parts thereof which contain entries of marriages celebrated in the months of July, August, and September, 1835; and state whether or not there is in said register any entry of or relating to a marriage between Thomas B. Craufurd and the said Elizabeth Taylor.

6. State whether the said register book is a book properly belonging to the said church, or is it a private memorandum book of your own; and if you have no objection to part with the possession of said book, be pleased to deliver it to the commissioner, to be returned with the commission.

7. At the time you officiated in said church, if, in answer to the preceding interrogatories, you should have stated that you did officate therein, were you or not aware of the law of said city of Washington requiring parties who proposed to contract marriage together to obtain a public license for that purpose; and were you or not in the habit of requiring such license from parties who desired you to celebrate the rites of marriage between them?

8. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of your examination on the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

T. S. ALEXANDER,
For Defendant,

159 *Cross-interrogatories to be propounded to the Rev. Timoleon Fiziac.*

1. State where you were born, and your present age.

2. If you state that you resided in Washington city in 1835, say 26 years ago, please also state in what year you left Washington, and when you left the United States, and in what countries and places you have resided since, and in what capacity, profession, or business you have been engaged since 1835 hitherto.

3. State how many marriages you have celebrated in your life, and how many since 1835, as nearly as you can recollect; and especially state whether you can recall the names of those whom you have thus married by means of your power of memory, unaided by memoranda.

4. What acquaintance had you with Thomas B. Craufurd, of Prince George's county, Maryland, and how often, and when, and on what occasions, have you seen and conversed with him.

5. What was your acquaintance with Elizabeth Taylor, the sister of Mrs. Evans who was wife to the sexton, Evans, of Washington city, and how often and where have you seen Elizabeth Taylor? and especially state whether you ever saw her with said Thomas B. Craufurd, and whether you ever baptized or christened any of her children, giving their names and the years in which they were baptized or christened.

6. If you baptized or christened any child or children of said Elizabeth Taylor, state whether you kept any record or memorandum in which said baptism or christening is entered; and if so, produce the same if in your possession,
and if not, state where the same is; and especially state whether you entered
160 her said child or children as natural or illegitimate child of Elizabeth Taylor, or as the child of Thomas B. Craufurd and Elizabeth Taylor, his wife.

7. State whether, or not a marriage record was not kept at St. Patrick's church, in Washington city, during the year 1835; and if so, state whether you carried said record with you when you left Washington, and if not, where and in whose charge was it left; and describe the size and appearance of said record, and state whether you can now recollect all the names recorded therein,

and especially whether the names of Thomas B. Craufurd and Elizabeth Taylor are not therein recorded.

8. If you have any memorandum in your possession, and now produced, state whether the same is the official record book of marriages kept at St. Patrick's church, and how late it bears date, and if said memorandum is not the official record kept in said church; then state whether you can identify the same as a faithful copy from said record book, made by yourself, without any addition or omission; and especially state whether you can positively swear that said memorandum, produced by you, contains each and every entry of marriages made in the official record book while you were at St. Patrick's church.

9. State whether you would not have celebrated a secret marriage between parties living to your knowledge in sin, one or both of whom would only consent to be married on the condition that such marriage was to be kept secret.

161 10. Are you aware that the penalty on a minister for marrying parties in Washington without a license was merely a pecuniary fine?

11. Have you ever heard Sarah Evans, now deceased, say that her sister Elizabeth had married Thomas B. Craufurd, or any else? And, if so, state where and what she said. The Sarah Evans referred to was the wife of the sexton of the church.

ROBERT J. BRENT,
SAM. H. BERRY,
THOMAS G. PRATT,
For Plaintiff.

Circuit court United States, 4 circuit, district of Maryland.

GEORGE T. CRAUFURD and others, lessee,
vs.
RICHARD S. BLACKBURN.

It is agreed that a commission issue to James Lesley, junior, the American consul elect for Lyons, France, to take the testimony of witnesses in this cause.

TH. S. ALEXANDER,
For Defendant.

Provided, before proceeding, the said James Lesley shall qualify himself by taking the oath in said commission stated, and shall successively propound each and every interrogatory and cross-interrogatory to said witness, (Rev'd Timoleon Fiziac,) reduce his sworn answers thereto to writing.

And provided no other question shall be propounded to said witness than the within interrogatories aforesaid, and that the answers and interrogatories be all carefully enclosed in a seal envelope, and addressed to the clerk of the 162 circuit court of the United States, Baltimore, Maryland.

R. J. BRENT,
For Plaintiff.

Circuit court U. S., Maryland district.

CRAUFURD'S LESSEE
vs.
BLACKBURN.

It is agreed that the commission issued to James Lesley, jr., be annulled, and another commission issued to James Lesley on the terms on which the former commission was issued. The commission to issue without further notice, and to be executed on the interrogatories already filed.

TH. S. ALEXANDER, *for Def't.*
R. J. BRENT, *for Pl'ff.*

Sept. 13th, 1861.

THE UNITED STATES OF AMERICA, *District of Maryland, to wit:*

To James Lesley, of Lyons, esquire, greeting:

Be it known that you are appointed commissioner to examine evidences in a cause now depending in the circuit court of the United States, for the fourth circuit, in and for the Maryland district, between John Denn, lessee of George T. Craufurd and others, plaintiff, and Richard S. Blackburn, defendant.

Therefore you are hereby requested, having first taken the oath here-
163 unto annexed, and also administered the annexed oath to the person
whom you shall appoint as clerk to attend the execution of this commission, that at such time and place as to you shall seem convenient, you cause to come before you all such evidences as shall be named or produced to you by either the plaintiff or defendant, and that you examine them upon their corporal oaths, to be by you administered on the Holy Evangely of Almighty God, touching their knowledge or remembrance of anything that may relate to the cause aforesaid; and having reduced the depositions of the witnesses so taken by you into writing, you send the same, with this commission, closed under your hand and seal, to the said circuit court with all convenient speed.

Witness the honorable Roger B. Taney, chief justice of our Supreme Court, the first Monday in December, in the year of our Lord, one thousand eight hundred and sixty.

R. J. B. }
J. S. A. }
THOMAS SPENCER,
Clerk Circuit Court.
Issued 16th September, 1861.

Commissioner's oath.

You shall, according to the best of your skill and knowledge, truly, faithfully and without partiality to any or either of the parties, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now or
which may hereafter, before the said commission is closed, be presented
164 to and left with you by either party: so help you God.

Clerk's oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, and transcribe the depositions of all and every the witness and witnesses produced before and examined by the commissioner named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioner to take, write down, and transcribe the said depositions, or any of them: so help you God.

The execution of this commission appears in a certain schedule hereunto annexed.

JAMES LESLEY, [SEAL.]
Commissioner.

[Copy.]

This oath was administered to the Reverend Timoleon Fiziac, at the convent of the Sisters of Saint Joseph de Clany, at Limoux, France, and not at Carcasonne, the place of his residence, for the reason stated in the endorsement on the commission directed to me and hereunto annexed.

Witness:
LOUIS MULLEN.
JAMES LESLEY,
Commissioner.
Lyons, October 18, 1861.

[Copy.]

This commission, directed to my son James, and transferred to me by
165 the commission directed to me, and hereunto annexed, was executed at
the convent of the Sisters of St. Joseph de Clany, at Limoux, France, and not at Carcasonne, the place of residence of the Reverend Timoleon Fiziac, for the reason stated in the endorsement on said commission directed to me and hereunto annexed.

Witness:
Louis Mullen.
JAMES LESLEY,
Commissioner.
Lyons, October 18th, 1861.

This commission directed to me was not executed at Carcasonne, France, the place of residence of the Reverend Timoleon Fiziac, for the reason stated, that upon my arrival at that city, and inquiring for him at his domicil, I was there informed that he was not at home, but that he had gone to the convent of the Sisters of St. Joseph de Clany, at Limoux, France, whither I followed him, and at the said convent executed this commission, being satisfied by sufficient and ample proof that he is the Reverend Timoleon Fiziac mentioned in the written commission.

Witness my hand and seal.

JAMES LESLEY, [seal.]
Commissioner.

Lyons, October 18, 1861.

United States Consulate, *Lyons, France.*

On the eighteenth day of October, A. D. eighteen hundred and sixty-one, before me, Louis Wm. Veollin, United States v. consul in Lyons, appeared James Lesley, U. S. consul elect for Lyons, and commissioner appointed by the circuit court of the United States, district of Maryland, to take testimony of
Timoleon Fiziac; said James Lesley being to me personally known, made
166 oath to and subscribed before me the three above affidavits.

For witness whereof, I have hereunto set my hand and official seal, in Lyons, the year and day as above.

LOUIS W. VEOLLIN,
United States V. Consul.

At the execution of the annexed commission, issued out of the circuit court of the United States, 4th circuit, and district of Maryland, and to me directed, and empowering me to examine evidences in the cause depending in said court between John Denn, lessee of George T. Craufurd and others, as plaintiffs, and Richard S. Blackburn as defendant, I, James Lesley, the commissioner therein named, having, on the 16th day of October, 1861, at 12 o'clock m., in the city of Limoux, France, taken before Mr. Ribes, the suppliant du juge de paix of and for said city, duly commissioned and qualified, the oath, both in French and English, required by said commission, and hereto annexed, marked A and A2, with proces verbale, certifying said oath, marked A3, hereunto annexed, and having afterwards gone to the convent of the Sisters of St. Joseph de Clany, at the said city of Limoux, did there, on the said 16th day of October, A. D. 1861, at 4½ o'clock p. m., proceed to take the following depositions to wit:

The Reverend Timoleon Fiziac, a witness of lawful age produced on
167 the part of *the part of* the defendant, being duly sworn, as shown by his
oath hereunto annexed, marked B, and examined on the interrogatories and cross-interrogatories herewith returned, deposes and says:

1. To the first interrogatory, What is your profession, occupation or employment, &c.? the respondent answers:

I am and have been a priest in communion with the Roman Catholic church for thirty-nine years.

Ex

2. To the second interrogatory, Were you or not, in the year 1835, &c.? the respondent answers:

I was in the year 1835 officiating priest at St. Patrick's church, of Washington; from the year 1831 to 1836.

3. To the third interrogatory, If, in answer to the last, &c., the respondent answers:

I cannot recollect.

4. To the fourth interrogatory, Was or not any register kept? the respondent answers:

No official register of marriages was kept, but for my own satisfaction I used to retain the names of persons whom I married; but the names of Thomas B. Craufurd, of Prince George's county, Maryland, and of Elizabeth Taylor, of said county and State, do not appear there; but this is not a proof that I have not married them, because I could have forgotten to write their names down.

5. To the fifth interrogatory, If you shall say, in answer to the last interrogatory, &c., the respondent answers:

My reply to the fourth interrogatory is my reply to this one.

168 6. To the sixth interrogatory, State whether the said register book, &c., the respondent answers:

I have answered this interrogatory in my answer to the fourth interrogatory, and I decline to deliver the private memorandum which I kept.

7. To the seventh interrogatory, At the time you officiated, &c., the respondent answers:

I was aware of the law in question, and I was in the habit of requiring such license from persons who desired me to celebrate the rights of marriage between them.

8. To the eighth interrogatory, Do you know or can you set forth, &c., the respondent answers:

I never celebrated the rights of marriage without requiring two witnesses. The two witnesses must of course be produced by the parties pretending that I have married them.

Cross-interrogatories.

1. To the first cross-interrogatory, State where you were born, &c., the respondent answers:

I was born at Narbonne, France, and I am now sixty-two years old.

2. To the second cross-interrogatory, If you state that you resided, &c., the respondent answers:

I have answered this question already, and I left Washington, U. S., in 1836, and I have nothing more to say to this question.

169 3d. To the third cross-interrogatory, State how many marriages, &c., respondent answers:

I don't know and cannot recall the names.

4. To the fourth cross-interrogatory: What acquaintance, &c.? respondent answers:

I had no acquaintance with them, and cannot recollect whether I have ever seen or conversed with them.

5. To the fifth cross-interrogatory, What was your acquaintance with, &c.? the respondent answers:

I do not recollect having had any acquaintance with Elizabeth Taylor. I can only say I knew Mr. Evans who was sexton in Washington city. This is all I can say to the fifth cross-interrogatory.

6. To the sixth cross-interrogatory: If baptized or christened, &c.? respondent answers:

I answered this question by the preceeding, but I never kept any record of children baptized by me; such a record, was, it seems to me, kept at the church, and I left it there when I returned to France.

7. To the seventh cross-interrogatory, State whether or not a marriage record, &c.?

The respondent answers: I have already answered this interrogatory.

8. To the eighth cross-interrogatory, If you have any memorandum? respondent answers:

I have also anwered this question already.

9. To the ninth cross-interrogatory, State whether you would not, &c.? respondent answers:

I never did, indeed.

170 10. To the tenth cross-interrogatory, Are you aware that the penalty, &c.? respondent answers:

I don't recollect whether I was aware of any penalty, but I never married parties without a license.

11. To the eleventh cross-interrogatory, Have you ever heard Sarah Evans, &c.? respondent answers:

I cannot remember, and of course say nothing about it.

FIZIAC. [SEAL.]

Sworn and subscribed before me this 16th day of October, A. D. 1861.

JAMES LESLEY, [SEAL.]
Commissioner.

There being no other witnesses to be examined, the commissioner closed the said commission, and herewith returns the same, under his hand and seal, this 16th day of October, A. D. one thousand eight hundred and sixty-one, (1861.)

JAMES LESLEY, [SEAL.]
Commissioner.

The within and foregoing examination taken, reduced to writing, and by the witness subscribed and sworn to this 16th day of October, 1861.

JAMES LESLEY, *Commissioner.*

A.—*Serment du Commissionaire.*

Circuit court des Etats Unis, 4^{m} circuit et district de Maryland.

JOHN DENN, preneur a bail de
GEORGE T. CRAUFURD et autres,
vs.
RICHARD S. BLACKBURN.

171 Moi, James Lesley, je jure que selon, le mieux de mon habilete et savoir, sentablement fidelement et sans partialite à aucune on à l'une on à l'autre des parties je prendrai les examins et dispositions de tous et de chaque temoin et temoins poduits et examinis en vertu de la commission, ce annexee sur les interrogatories maintenant on qui pourrant ci-apres, avant que la dile commission soit terminee être produits a moi et laissees avec moi par on l'une on l'autre partir; et aussi que sontablement fidelement, et sans parlialite à aucune on à l'une on à l'autre des parties dant cette cause je prendrai mettrai par é crit et transcroiceé les depositions de tous, and chaque témoin et témoin products, derant, moi et examins par moi le commissionaire nomme, dans la commission ci annexee: Ainse Dieu m'aide.

JAMES LESLEY. [SEAL.]

Le germent ci denas a ete administre a Jam. Lesley, commissionare nomme por le circuit court des Estas Unis 4th circuit et district de Maryland, par M. Ribes, notaire ueimsy supple ceur M. le judge da par eny vorhe por cause legitime Gutte sa de cotte traductria le 18 8'bre, 1861, suerant to proces-verbal ci annexi u et engit a segue avec uise.

RIBES.

James Lesley.

(Being unable to find any one in Limoux acquainted with the English language competent to discharge the duties of clerk, I acted in that capacity myself, and the within oath includes the substance of the clerk's oath as prescribed by the commission.

JAMES LESLEY, *Commissioner.*)

172 A 2.—*Commissionaire oath.*

Circuit court of the United States, 4th circuit and district of Maryland.

John Denn, lessee of George T. Craufurd and others,
vs.
Richard S. Blackburn.

I, James Lesley, do swear that I will, according to the best of my skill and knowledge, truly and faithfully, and without partiality to any or either of the parties, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission hereto annexed, upon the interrogatories now or which may hereafter, before the said commission is closed, be produced to and left with me by either party; and also that I will truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, and transcribe the depositions of all and every the witness and witnesses produced before me, and examined by me, the commissioner named in the commission hereunto annexed: so help me God.

JAMES LESLEY. [SEAL.]

M. Ribes du juge de paix de hurmony amr France le 16 8'bre, 1861.

(This is the oath referred to in the caption to the answers marked A 2.

JAMES LESLEY, *Commissioner.*)

173 A 3.

Extrait des registres de la justice de paix du canton de Limoux.

Lau mil nuit cent. Sriseaute un es le seize Octobre.

Par devant nous Jurien Ribes suppleant de la justice de paix du Canton de Lemoix arrived esse ment de Lemoix departement de l'eui de Moii trecia le juge de paix absent preur cause legitime assille de notre greffier.

A ce nysain Monseur James Lesley, ensiur. Des Etats Unis d'Amerique a lyin leguel nous a dit qu'en restu d'uire commissione herbale dunt et a ete charge dans sen pays it se presente desant nous a neffer de pretio serment au suz et de la commissione dieut il a ete charge.

Sur quoi nent suppleant susdit et soussigne arons sur le requisitione du dit James Lesley rein le sermint qu'il a prononce a peur pres en ces termes. Moi James Lesley, je-jure de lreevoir lans purtiatile pour ceueune despartus selon me lummerer et mu eruseince en trule rente et fidelete les depositions de chaque temoin prodiit et interrego en vertu de la conversion verbale suirant la questo y'agis. Prumettant de rayrysoster et cerere tous les interrogatione deysuis le commencement jus qu a la pin de l'enquete dent je suis charge avec la plus structe et la plus fidele impartialite sans aneum consideratione preur l'une au l'autre la quette j'ai ete nomme admittance a l'effet de precedur a l'enquite sur mentioned. Ainsi Dieu m'aide.

174 Demeurant le dit serment preti ordement qu acte en sera dresse et renvoyens le dit James Lesley a procedur a la dite enquite ainsi es comme il letesera.

De tout quoi nous arons ausse le present proces-verbal de serment que nous arans signe anes le dit James Lesley et notre greffier apres lecture. Fait a Lemoix lan mois et jour sus dit James Lesley. Ribes et resultz greffier signe a la minute.

En registre a Lemoix le seize Octobre, 1861, p$\frac{6}{26}$ C. C. rien un France, Decemnir dix, cue times Boyer Seani.

COLLATIONNE, *Rerally qqvla.*

This is the document mentioned in the caption to the answers at the "proces verbale," marked A 3.

JAMES LESLEY, *Commissioner.*

Ribes Goy't.

B.

Oath of Reverend Timoleon Fiziac.

I do swear on the Holy Evangely of Almighty God that the answers to be given by me to the interrogatories and cross-interrogatories to be propounded by James Lesley, commissioner, to me, in an action now pending in the circuit court of the United States, 4th circuit and district of Maryland, between John Denn, lessee of George T. Craufurd and others, plaintiffs, and Richard S. Blackburn, defendant, shall be the truth, the whole truth, and nothing but the truth: so help you God.

FIZIAC. × [SEAL.]
Can hire.

175 Sworn and subscribed before me, this 16th day of October, A. D. 1861, at the convent of the Sisters of St. Joseph de Clany, at Limoux, France.

JAMES LESLEY, [SEAL.]
Commissioner.

This is the oath of the Reverend T. Fiziac, referred to at the bottom of the caption to the answers marked B.

JAMES LESLEY, *Commissioner.*

This oath was administered to the Reverend Timoleon Fiziac, at the convent of the Sisters of St. Joseph de Clañy, at Limoux, France, and not at Carcasonne, the place of his residence, for the reason stated in the endorsement on the commission directed to me, and hereunto annexed.

LYONS, *October* 18, 1861.

JAMES LESLEY, *Commissioner.*

Witness:
LOUIS WHOLLIER, *U. S. V. C.* [SEAL.]

Sealed by JAMES LESLEY, *Commissioner.* [SEAL.]

But the plaintiff objected to the admissibility of the following parts of said deposition, to wit:

Mr. Brent's objection to deponent's answers to the 4th, 5th, 6th and 7th direct interrogatories, and to his answers of the 9th and 10th cross-interrogatories.

And the court thereupon allowed said deposition to be read in evi-

176 dence to the jury, except those parts thereof hereinafter mentioned,
which the court excluded and refused to permit to be read in evidence,
to wit:

All that part of the said deposition which speaks of the contents of a private memorandum of marriage kept by said defendant and not produced, and all said defendant's answers to the 9th, and as much of the answer to the 10th cross-interrogatories as follows the words "any penalty."

To which ruling of the court, and its exclusion of said last-named parts of said deposition, and each and every of said parts, the defendant excepted, and this his bill of exceptions is accordingly signed, sealed and enrolled this third day of December, 1862.

WILLIAM F. GILES. [SEAL.]

Sixth exception.

CRAUFURD'S LESSEE
vs.
BLACKBURN.

After the evidence in the next preceding bill of exceptions, (which is, by agreement, made part of this bill of exceptions,) the defendant, further to sustain the issue on his part, produced William A. Jarboe, a competent witness, and gave in evidence by him that he is the register of wills of Prince George's county aforesaid, and produces the following paper:

Exhibit A.

Copy of the will of Thomas B. Craufurd.

In the name of God, amen. I, Thomas B. Craufurd, of Prince George's
177 county, Maryland, being apprehensive of death, but of sound and disposing mind, memory and understanding, and being anxious, before I die, to settle and dispose of all my estate by last will and testament—

In the first place, I desire all my just debts and funeral charges to be paid by my executor hereinafter named, and after their payment I will and devise as follows:

I will, devise, and give unto George Thomas Craufurd, my natural son by Elizabeth Taylor, now about eight years old, the one-half of my entire landed estate, to be laid off to him so as to include the dwelling-house and the outhouses attached thereto, at Greenwood, where I now reside, to him the said George T. Craufurd, his heirs and assigns, in fee simple, forever.

Also, I will, devise and give the other moiety or half of all my landed estate to Mary Elizabeth Craufurd, Sarah Jane Craufurd, and Anna Victoria Craufurd, my natural children and daughters by the said Elizabeth Taylor, to be equally divided between them, share and share alike, to them, their heirs and assigns forever, as tenants in common. I give and bequeath unto the said George Thomas Craufurd, my aforesaid son, the one-half of all my negroes and other personal estate of every description whatever, including debts due to me, and every other description of personal property whatever, to him, the said George Thomas Craufurd, his executors, administrators, and assigns.

The other half of my negroes and personal estate, of every description as aforesaid whatever, I give and bequeath unto the aforesaid Mary Elizabeth
Craufurd, Sarah Jane Craufurd, and Anna Victoria Craufurd, my afore-
178 said natural children and daughters by the said Elizabeth Taylor, to be equally divided among them, share and share alike.

And whereas, in all probability, the said Elizabeth Taylor may be now pregnant with child by me, I further devise and will that, in case such child shall be born after my death, that then, and in that event, said child shall have an equal share with my aforesaid daughters in all that half of my real and personal estate which I have hereinbefore devised and bequeathed to them.

I further will and devise, and I do hereby direct, that Elizabeth Taylor, the mother of my aforesaid children, shall live and have her home at Greenwood, with the aforesaid children, so long as she shall live single and unmarried; and lastly, I do hereby constitute and appoint my friend Thomas T. Bowie to be sole executor of this my last will and testament, and guardian to my aforesaid children for and until they shall respectively arrive to full age.

In testimony whereof, I have hereunto set my hand and mark, not being able to write my name in consequence of a paralytic attack in my right arm by which I have lost the use of it, and affix my seal, this twenty-second day of July, in the year of our Lord one thousand eight hundred and ~~fifty~~-four.

his
THOMAS + B. CRAUFURD. [SEAL.]
mark.

Signed, sealed, published and declared by Thomas B. Craufurd as
179 and for his last will and testament, in our presence; and at his request,
in his presence, and in the presence of each other, we have subscribed our names as witnesses thereto.

BENJ. L. GANTT.
W. BOWIE BROOKE.
G. B. STONE.

PRINCE GEORGE'S COUNTY, *sct.*, *April 4th*, 1848:

Then came Benj. Gantt and George B. Stone, two of the subscribing witnesses to the within will of Thomas B. Craufurd, late of Prince George's county, deceased, and made oath on the Holy Evangely of Almighty God that they did see the testator herein named sign and seal this will, and him publish, pronounce, and declare the same to be his last will and testament; that at the time of so doing he was, to the best of their apprehension, of sound and disposing mind, memory, and understanding; that they, together with W. Bowie Brookes, the other subscribing witness, respectively subscribed their names as witnesses to this will, in the presence of the testator, at his request, and in the presence of each other.

Sworn before—
JAMES HARPER,
Reg. of Wills, P. G. County.

And proved, further, that the said paper had been filed in the office of the register of wills of said county, and was there preserved as the last will and testament of Thomas B. Craufurd, and had been admittted to probate as such.

And the said defendant then produced Thomas F. Bowie, one of the attorneys of the defendant in this action, a competent witness, and gave in evidence by
him that the body of said last will, with the exception of the words
180 "Thomas F. Bowie," in the clause appointing him executor, and the
date of said paper, is in the handwriting of said witness, and that he was present at the execution of said will by Thomas B. Craufurd, and at the attestation thereof by the subscribing witnesses; and that the said words, "Thomas F. Bowie," and the date aforesaid, were inserted in said last will by Benjamin L. Gantt, one of the said subscribing witnesses, by direction of said testator, and just before the execution of said will; and that said will was executed on the day of the date thereof.

The witness further testified that about three weeks prior to the execution of said last will the said Thomas B. Craufurd came to the law office of said witness, in Upper Marlborough, and had a conversation with witness concerning the proper disposition of his property, so as to secure the same to his children, the lessees of the plaintiff, and asked the advice of said witness on the subject.

That subsequently on the same day said Thomas B. Craufurd went with and

by the invitation of the witness to the residence of the witness, and took dinner with him; that he, the witness, had been for many years before that time, and continued up to the death of said Craufurd, to be his legal adviser, and had been employed by said Craufurd in all suits in which he had been interested, and has no doubt that if other such controversies had arisen, the witness would
181 in like manner have been retained by said Craufurd as his counsel; but
that the said witness had no general retainer to appear in all cases for said Craufurd, and witness supposed that, on the occasions referred to, the said Craufurd rather addressed him as a friend than as counsel, and witness advised with said Craufurd very freely on the subject.

But the result of the conversation on the said occasion, and of the advice then given by him, and finally accepted by said Craufurd, was the preparation by witness of the draft of said last will, prepared by witness in pursuance of the advice so by him given in the course of said conversation, and of the instructions of said Craufurd given to witness after the acceptance of said advice; and that the witness charged and received from said Craufurd a fee of fifty dollars for his advice so, as aforesaid, given to said Craufurd on the said occasion, and for the preparation of said will.

And the said defendant thereupon asked the witness to state, in detail, to the jury the conversation and statements made by said Craufurd at the said interview touching the disposition of his said property, and offered to give in evidence by said witness that in the course of his conversation said Craufurd produced to the witness drafts of promissory notes, signed by said Craufurd, for the payment of large sums of money to his aforesaid children, the lessees of the plaintiff, and stated that he had been advised to make said promissory notes by some one or other of his friends as provisions for his said children, and asked witness what he thought of it.

That witness believed that the said Elizabeth Taylor was no more
182 than the mistress of said Craufurd, and that his children by said Elizabeth
Taylor were illegitimate, and his advice to said Craufurd was given on that hypothesis; that witness objected to said promissory notes as provisions for said children, as they might lead to difficulties between said children and Craufurd's relations, and explained to said Craufurd that there were three modes by which the said Craufurd might safely provide for said children, to wit:

By deed of his property, reserving a life estate to himself, or by last will, or by marrying said Elizabeth Taylor, and legitimatizing said children; and witness *and witness* strongly expressed his preference for the last-named expedient.

That said Craufurd, however, rejected the proposition that he should marry said Elizabeth Taylor at once, and with great warmth declared that he would never marry her; and thereupon the witness advised said Craufurd to make a will, and so provide for said children; and in accordance with said advice, said Craufurd directed witness to prepare the draft of said will, which the said witness accordingly then did, agreeably to the instructions of said Craufurd; and said Craufurd especially instructed said witness, in said will, to describe the said children as his natural children by the said Elizabeth Taylor; and that in consequence of this express direction of said Thomas B. Craufurd, the said
183 children were described in said will as his natural children.

But the plaintiff objected to the defendant's giving in evidence by said attorney any statements made to him by said Thomas B. Craufurd at the time of his consultation said witness, as aforesaid, touching the illegitimacy of the lessees of the plaintiff.

And the court sustained the said objections, so far as to refuse to permit the defendant to give in evidence by said witness the conversation between said Thomas B. Craufurd and said witness at the time of the consultation and interviews between them, as aforesaid, touching the illegitimacy of the lessees of the plaintiff.

5 But the court allowed the defendant to give in evidence by said witness that the said will was prepared by said witness in accordance with the directions and instructions of the said Thomas B. Craufurd; to which ruling of the court, and to the exclusion of the said evidence, the defendant excepted, and this his bill of exceptions is accordingly signed, sealed, and enrolled this 3d day of December, 1862.

WILLIAM F. GILES. [SEAL.]

7 *Seventh exception.*

CRAUFURD'S LESSEE
vs.
BLACKBURN.

After the evidence in the preceding bill of exceptions, which is by agreement made part of this exception, the defendant produced Mrs. Vermillion, a competent witness, and offered to prove by her that before the commencement of the illicit intercourse between the said Thomas B. Craufurd and the said Elizabeth Taylor, had become debauched by some other person, and had given
184 birth to a bastard child, and that such facts were known to the said Thomas B. Craufurd before the commencement of his said intercourse with her; and the said evidence was offered to meet the opening statement made to the jury by one of the counsel of the plaintiff, detailing what the plaintiff expected to prove—that she was a pure woman at the time of the commencement of her aforesaid intercourse with the said Thomas B. Craufurd, and, as circumstances tending to sustain the defence, that the said Craufurd was never married to the said Elizabeth Taylor.

But the plaintiff objected to the admissibility of the said offered evidence, and the court sustained the said objection, and refused to permit the said evidence so offered to be given to the jury; to which ruling of the court, and its exclusion of the said offered evidence, the defendant excepted, and this his bill of exceptions is accordingly signed, sealed, and enrolled this 3d day of December, 1862.

WILLIAM F. GILES. [SEAL.]

8 *Eighth exception.*

CRAUFURD'S LESSEE
vs.
BLACKBURN.

After the evidence detailed in the next preceding bill of exceptions, which is by agreement made part of this bill of exceptions, the defendant, further to sustain the issue on his part, proved by several witnesses various acts and declarations of Thomas B. Craufurd tending to prove that he was never
185 married to Elizabeth Taylor, but that she was his mistress, and also read to the jury the following deed and bills of sale:

Deed from Thomas B. Craufurd and David Craufurd to George W. Graham.

This indenture, made the fifteenth day of March, in the year eighteen hundred and forty-three, between Thomas B. Craufurd and David Craufurd, of Prince George's county, Maryland, of the one part, as grantors, and George W. Graham, of the county and State aforesaid, of the other part, as grantee, witnesseth:

That whereas the said Thomas B. Craurfurd and David Craufurd, acting as well on their own behalf as on behalf of their lunatic brother, a certain Bushrod W. Craufurd, have agreed and contracted to sell and convey unto the said George W. Graham the lands and premises hereinafter mentioned and particularly described at and for the sum and price of twenty-four thousand six hundred and eighty-five dollars and ninety cents, current money, upon credit

of two years from the date of said contract of sale; the said purchase-money to
bear interest from the said day of sale until paid, and the interest on the whole
sum to be paid annually; and whereas also, at the time of the execution of said
contract of sale, it was agreed by and between the said parties to this deed,
that upon the said George W. Graham's executing bonds for the said purchase-
money, with a certain Charles Hill as security, to them, the said Thomas
186 B. Craufurd and David Craufurd, for the payment of the same upon the
terms and in the manner aforesaid, that they, the said Thomas B. Crau-
furd and David Craufurd, would execute a deed or deeds of conveyance of the
said land and premises to him, the said George W. Graham, his heirs and as-
signs; and whereas, in compliance with his part of the said engagement, the
said George W. Graham has executed his bonds aforesaid, with the said Charles
Hill as surety, and delivered the same to them, the said Thomas B. and David
Craufurd, and the said Thomas B. and David Craufurd have accepted the same
as security for the payment of the purchase-money aforesaid; and whereas also,
in consequence of said contract of sale being in reference to lands in which a
lunatic, or person *non compos mentis*, had a joint interest with the said Thomas
B. Craufurd and David Craufurd, it became necessary to apply to a court of
equity to ratify and confirm the said sale so as to bind the rights of said lunatic;
and in consideration of said sale being created for the advantage and benefit of
said lunatic, a decree was passed by Prince George's county court, sitting as a
court of equity, on the twenty-eighth day of October, eighteen hundred and
forty-two, in a cause therein depending, in which the said Thomas B. Craufurd,
David Craufurd, George W. Graham, and a certain Horatio C. Scott were com-
plainants, and the said Bushrod W. Craufurd was defendant, ratifying and con-
firming said contract of sale; and by said decree a certain Thomas F. Bowie,
esquire, was appointed trustee, to convey the interest of the said lunatic,
187 defendant, in the said lands to the said George W. Graham; the said
Thomas B. Craufurd and David Craufurd were also directed and ordered
by the said decree to convey their interest in said lands to the said George W.
Graham in execution of their part of the agreement aforesaid; and whereas
the said Thomas F. Bowie, as trustee aforesaid, hath, by a deed bearing
equal date with this, conveyed unto the said George W. Graham, his heirs
heirs and assigns, all the right and estate of the said lunatic, Bushrod W. Crau-
furd, in and to the said lands; and now, in compliance with the terms of the said
decree and execution of their part of the agreement aforesaid, the said Thomas
B. Craufurd and David Craufurd are willing to execute these presents:

Now, therefore, this indenture witnesseth, that the said Thomas B. Craufurd
and David Craufurd, in consideration of the above recited premises and also
in consideration of the sum of five dollars, current money of the United States,
to them in hand paid by the said George W. Graham, the receipt of which
is hereby acknowledged, have granted, bargained, sold, aliened, released, en-
feoffed, and confirmed, and by these presents do grant, bargain, sell, alien, re-
lease, enfeoff, and confirm unto the said George W. Graham, his heirs and
assigns, forever, all that portion of the real estate of the late Col. David
Craufurd, deceased, consisting of several tracts or parcels of land, lying con-
tiguous to each other, called Kingston Park, Bacon Hall, the Meadow Brook
Grove, Delay, and Addition to Delay, and Weston, lying and being in Prince
George's county, Maryland, which descended to them *to them*, the said Thomas
B. Craufurd, David Craufurd, and the said Bushrod W. Craufurd, as the heirs-
at-law of the said Col. David Craufurd, deceased, (except the dwelling-
188 house and lot of land thereto attached, estimated to contain eleven and a
half acres, more or less, which has been sold to a certain Sarah Forrest,
and except also a lot of ground in the town of Upper Marlborough, containing
about 4 acres, adjacent to the meadow land, and usually known as Wedge's lot,
which has been sold to a certain Horatio C. Scott,) and which said portion of

said real estate, by virtue of a commission which issued out of Prince George's county court on the eleventh day of November, eighteen hundred and forty-one, at the instance and upon the petition of Sarah Forrest and John A. Kearney and wife, was assigned and allotted by the commissioners therein named to them, the said Thomas B. Craufurd, David Craufurd, and Bushrod W. Craufurd, as their portion and share of the said real estate, and which by the return of the commissioners and the plat thereunto, filed in the county court aforesaid, is described, designated as division No. 2, reference being had to the said commission (No. 185 in the commission docket) will more fully and at large appear.

Beginning, for a more minute and particular description of that portion of the said real estate hereby sold and intended to be conveyed to the said George W. Graham, at a point on the main road leading from Upper Marlborough to Trump's Hill, at the end of fifty-four perches from a marked locust, the beginning tree of the first line of division No. 2, and at the end of said line so as to exclude the dwelling-house aforesaid and lot thereto attached, and running 189 from the end of the said fifty-four perches line by and with the said main road, and binding thereon the following courses and distances, to wit:

South forty-six and a fourth degrees west, forty perches; south seventy-three and a half degrees west, sixteen perches; south eighty-eight degrees west, twenty-eight perches; south fifty degrees west, thirty-five perches; south fifty-eight and a fourth degrees west, thirty-nine and a half perches; south forty-four and a half degrees west, twelve perches; south sixty-seven and a half degrees west, sixteen perches; south fifty-three degrees west, twenty-nine perches; south sixty-four and a fourth degrees west, thirty-five perches; south fifty-one and three-fourths degrees west, thirty-five perches; south sixty degrees west, thirteen and a half perches; south forty-one and a fourth degrees west, sixteen and three-fifths perches; south fifty-five degrees west, twenty-three perches; then south forty-three and a fourth degrees west, until it intersects at a rose-bush on the main road aforesaid, and eighty perch line of division No. 1, being a dividing line between a twenty-acre lot of said division No. 1, sold by Sarah Forrest to Thomas Clagett, and the lands of the said division No. 2; then running with and by the said dividing line the courses thereof north, eighty-four and a half degrees west, until it intersects the thirty-fifth line of the outlines of the whole survey of said real estate at a stone; then with the said thirty-fifth line and the courses thereof north, forty-six and three-fourth degrees west, twenty-nine and a third perches to a stone at the roots of a white oak, on the west side of a branch; thence still by the same course one hundred and a third perches 190 to a stone on the side of a hill, near a cluster of white oaks; thence north, forty-four degrees east, ninety-one perches to a stone; thence north, ten degrees west, thirty-two and four-fifths perches to a stone; thence north, sixty-three and three-fourths degrees east, sixty-four perches to a stone, on the south side of the public road leading from Marlboro to the city of Washington; the five last lines dividing the lands embraced in said division, No. 2, from the lands of Thomas Clagett; thence down the said road south eighty-eight and a half degrees east, twenty-seven perches; north seventy-six and a half degrees east, forty perches; north sixty-seven and a half degrees east, one hundred and one perches; north eighty-one and a half degrees east, eighteen perches; north sixty-seven and a half degrees east, thirteen perches; then leaving the road, and running south twenty-two degrees east, thirty perches, to a stone near a large sycamore tree standing *standing* in the low grounds of the Cabbin branch, it being the second boundary of Brook grove, the first of Bacon Hall, and the third of the meadow; thence from said stone north eighty-six and a fourth degrees east, one hundred and nineteen perches, to the corner of Mrs. Tyler's lot; then south thirteen and a half degrees east, fifty perches; thence in a straight line to the beginning aforesaid, containing in all four hundred and twenty-eight and a half acres of land, more or less, the said lands

being all that portion of the real estate of the late Col. David Craufurd,
191 deceased, embraced in the said division No. 2, which lies to the right
of the main road leading from Upper Marlboro to Trump's Hill, except, as aforesaid, the dwelling-house and lot of ground thereto attached, sold to the said Sarah Forrest, and now in her possession; to have and to hold the said trusts or parcels of land and premises hereby bargained and sold, or intended hereby so to be, and every part and parcel thereof, together with the buildings and appurtenances, and all and singular other the premises, and every part and parcel thereof, unto the said George W. Graham, his heirs and assigns forever, and to and for no other use, intent, or purpose whatsoever; and the said Thomas B. Craufurd and David Craufurd, for themselves, their heirs, executors, and administrators, do hereby covenant, grant, promise, and agree to and with the said George W. Graham, his heirs, executors, administrators, or assigns, that they, the said Thomas B. Craufurd and David Craufurd, and their heirs, the said tracts or parcels of land and premises hereby granted, bargained, and sold, and every part and parcel thereof, with the appurtenances thereunto belonging, to him, the said George W. Graham, his heirs and assigns, against them, the said Thomas B. Craufurd and David Craufurd, and their heirs, and against all and every other person or persons whatsoever, claiming or to claim any right, title, or interest in and to the same, or any part thereof, shall and will hereafter warrant and forever defend by these presents.

In witness whereof, the said Thomas B. Craufurd and David Craufurd
192 have hereunto subscribed their names and affixed their seals the day and
year first hereinafter written.

J. B. CRAUFURD. [SEAL.]
DAVID CRAUFURD. [SEAL.]

Signed, sealed, and delivered in presence of—
WM. BECKETT.
GEO. W. WILSON.

STATE OF MARYLAND, *Prince George's County, sct:*

Be it remembered, that on this fifteenth day of March, in the year of our Lord eighteen hundred and forty-three, personally appeared before us, the subscribers, two of the said State's justices of the peace, in and for said county, Thomas B. Craufurd and David Craufurd, the persons professing to be grantors in the foregoing deed or instrument of writing, and being personally known to us as the grantors therein, and the identical persons who signed and sealed the same, acknowledged the said deed to be their act and deed for the purposes therein mentioned, and the lands and premises thereby conveyed to the right and estate of George W. Graham, the party granted therein named, his heirs and assigns forever, according to the purport, true intent and meaning thereof, and the acts of assembly in such case made and provided.

Acknowledged before and certified by us.

WM. BECKETT, *J. P.*
G. W. WILSON, *J. P.*

Enrolled the 13th March, 1843.

STATE OF MARYLAND, *Prince George's County, sct:*

193 I hereby certify that the foregoing was truly taken from liber J. B.
R., No. 2, folio 484, &c., one of the land record books of Prince George's county.

In testimony whereof, I have hereunto subscribed my name and affix the seal of the circuit court for Prince George's county, this twentieth day of November, A. D. 1862.

FREDERICK SASSCER, *Clerk.*

THOMAS B. CRAUFURD
and
DAVID CRAUFURD.
} Deed of partition, (copy of.)

This indenture of two parts, made and concluded this twenty-eighth day of May, in the year of our Lord eighteen hundred and forty-five, by and between Thomas B. Craufurd, of Prince George's county, in the State of Maryland, of the one part, and David Craufurd, in the same county and State, of the other part, witnesseth: That whereas they, the said Thomas B. Craufurd and David Craufurd, are seized in fee simple, and have and hold as tenants in common in equal shares, all the lands and real estate of their two deceased brothers, Nathaniel Craufurd and Bushrod W. Craufurd, which was devised to the said Nathaniel and Bushrod by the last will and testament of their father, the late Nathaniel Craufurd, bearing date the twenty-fifth day of May, in the year eighteen hundred and nine, and the several codicils thereto by reason of their said brothers' having
194 died intestate, and without children, being certain tracts or parcels of
land lying and being in Prince George's county aforesaid, called Greenwood Park, or Greenwood Park enlarged, part of the Westphalia; and a tract of land called Federal Hills; and also a tract or parcel of land called Waring's Grove; and whereas, also, the said Thomas B. Craufurd is seized in his own right, as devisee under and by virtue of the aforesaid last will and testament, of an undivided moiety or half part of that portion of said lands which was devised to him and the said Bushrod as tenants in common; and whereas the said lands and real estate hereinbefore named have never been divided between the said Thomas B. and David Craufurd, but the same has been used and occupied and enjoyed by hitherto in common between them; and whereas the said Thomas B. Craufurd and David Craufurd have now agreed upon a dividing line between them, and have concluded to hold and enjoy their respective parts thereof in severalty: it is therefore covenanted, granted, and agreed by and between the said Thomas B. Craufurd and David Craufurd, for himself and themselves, and for his and their heirs, executors, and administrators, and they do hereby severally and respectively covenant, grant, and agree to and with each other, their several and respective heirs and assigns, that a partition of all the fore-
195 going named lands shall be and is hereby made and determined in man-
ner following—that is to say, first, that he, the said Thomas B. Craufurd, his heirs and assigns, shall and may from henceforth have, hold, possess, and enjoy in severalty all that portion and those parts of their aforesaid lands called Greenwood Park and Greenwood Park enlarged, which lie within the following lines agreed on between the said parties, to wit: beginning at a stone mentioned in the last will and testament of Nathaniel Craufurd aforesaid, father of the said Thomas B. and David Craufurd, as the beginning of the lands devised in said will to Sarah B. Craufurd and Nathaniel Craufurd, said stone standing at the end of the twentieth line of Greenwood Park, resurveyed and having engraved on it the beginning of Ranelagh; and running from thence with the twenty-first line of Greenwood Park, and also the line of Greenwood Park enlarged, in succession, to the land purchased of the heirs of Bazil Waring, deceased, by the said Nathaniel Craufurd; then with the lines of Greenwood Park, and Greenwood Park enlarged, until it intersects a line drawn south from the beginning; and also a tract or parcel of land called Waring's Grove, together with the mill and mill-seat thereon, containing about ninety-four acres; said lands called Greenwood Park, and Greenwood Park enlarged, and Waring's Grove, containing together eight hundred and forty-nine acres of land, more or less, and being that portion of said real estate of the late Nathaniel Craufurd which was
196 devised by his said last will and testament to his widow, Sarah B. Crau-
furd, and his son, the aforesaid Nathaniel Craufurd, brother of the said David and Thomas B. Craufurd; and the said David Craufurd, for himself, his

heirs, executors, and administrators, do by these presents grant, release, and confirm the said lands and real estate hereinbefore particularly referred to to the said Thomas B. Craufurd, his heirs and assigns forever, as and for the said Thomas B. Craufurd's full share, part, and portion of, in, and to the real estate of the said Nathaniel Craufurd, father of the parties to this deed, and of the said Bushrod W. Craufurd and Nathaniel Craufurd, brothers of the said parties hereunto, to have and to hold the same, with all the privileges and appurtenances thereunto belonging, to him, the said Thomas B. Craufurd, his heirs and assigns forever, in severalty as aforesaid, and to his and their only use and behoof forever; and the said David Craufurd doth by these presents, for himself and his heirs, executors, and administrators, covenant and grant to and with the said Thomas B. Craufurd, and his heirs, executors, and administrators, *covenant and grant to and with the said Thomas B. Craufurd, and his heirs, executors, and administrators* and assigns, that he and they shall and may from henceforth forever peaceably and quietly have, hold, use, occupy, possess, and
197 enjoy the same, free and discharged of all right, title, interest, claim and
demand whatsoever of him the said David Craufurd, his heirs and assigns, or of any person or persons claiming by, from, or under him, or them, or either of them; secondly, that the said David Craufurd, his heirs and assigns, shall and may from henceforth have, hold, possess, and enjoy in severalty all the remaining parts of the said lands called Greenwood Park, and Greenwood Park enlarged, not hereinbefore embraced or mentioned; and also all that tract or parcel of land called Westphalia; and also a tract or parcel of land called Federal Hills, being that portion of the said real estate of the late Nathaniel Craufurd, the father of the said parties, which by his said last will and testament aforesaid was devised to the said Bushrod W. Craufurd and Thomas B. Craufurd, as tenants in common, to have and to hold the said remaining parts of Greenwood Park, and Greenwood Park enlarged, Westphalia, and Federal Hills, unto him, the said David Craufurd, his heirs and assigns, forever, in severalty, as and for the said David Craufurd's part of and share of the aforesaid lands, to his and their only use and behoof forever; and the said Thomas B. Craufurd, for himself, his heirs, executors, and administrators, doth severally covenant, promise, grant, and agree to and with the said David Craufurd, his heirs and assigns, that he and they shall and may from henceforth and forever peaceably and quietly have, hold, occupy, possess, and enjoy the same free and clear
198 of all right, title, claim, or demand whatsoever of him, the said Thomas
B. Craufurd, his heirs and assigns, or any other person or persons claiming from, by, or under them, or any of them.

In witness whereof, the said Thomas B. Craufurd and David Craufurd have hereunto interchangeably set their hands and seals the day and year first hereinbefore written.

T. B. CRAUFURD. [SEAL.]
DAVID CRAUFURD. [SEAL.]

Signed, sealed, and delivered—the interlineations and erasures in the 54th, 55th, 56th, 57th, 125th and 126th lines being first made—in the presence of—

J. R. BELT.
W. A. WALLACE.

STATE OF MARYLAND,
Prince George's County, sct:

Be it remembered, that on this twenty-eighth day of May, in the year of our Lord one thousand eight hundred and forty-five, personally appeared before us, the subscribers, two of the said State's justices of the peace in and for Prince George's county, Thomas B. Craufurd and David Craufurd, and severally and respectively acknowledged the foregoing deed or instrument of writing to be their act and deed for the purposes therein mentioned, and in pursuance of the

provisions of the act of assembly in such cases made and provided. And we
do further certify that we do know, of our own knowledge, that the said
199 Thomas B. Craufurd and David Craufurd are the same persons who are
named in and described as, and who profess to be parties grantors in the
said deed.

Acknowledged before and certified by us—

J. R. BELT, *J. P.*
W. A. WALLACE, *J. P.*

Enrolled the 28th day of May, 1845.

STATE OF MARYLAND,
Prince George's County, sct:

I hereby certify that the aforegoing is truly taken from liber J. B. B., No. 4, folio 154, &c., one of the land records of Prince George's county.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the circuit court of Prince George's county, this twentieth day of November, anno Domini 1862.

FREDERICK SASSCER, *Clerk.*

From—
GEORGE T. CRAUFURD
to
WILLIAM Z. BEALL.
} Deed.

This deed, made this twenty-fourth day of April, in the year of our Lord one thousand eight hundred and fifty-eight, by George T. Craufurd and Josephine Craufurd his wife, and Elizabeth Taylor, otherwise called Elizabeth Craufurd,
the natural mother of the said George T., all of Prince George's county,
200 in the State of Maryland, witnesseth: That for and in consideration of
the sum of fifteen thousand two hundred and fifty dollars current money
of the United States, paid and secured to be paid by William Z. Beall, of said State and county, at and before the sealing and delivery of these presents to the parties of the first part hereto, which is hereby acknowledged, the said parties of the first part do hereby give, grant, and sell unto the said William Z. Beall, in fee simple, all their right, title, interest, and estate at law and in equity, whether under the last will and testament of Thomas B. Craufurd, deceased, or otherwise, to the said parties of the first part, devised of, in, and to all that portion of the real estate of the late Thomas B. Craufurd now in the possession of the said George T. Craufurd, all that portion of lot number one, as designated and laid down by the survey of, and commissioners heretofore appointed to divide the real estate of Thomas B. Craufurd among his devisees, in fee, as will appear by the record of the proceedings in the cause of Thomas T. Bowie, guardian to George T. Craufurd, and others, complainants, and John H. Sansbury and Mary E., his wife, defendants, now of record in the circuit court for Prince George's county, sitting as a court of equity, and by the final decree thereon, and which has not been heretofore sold and conveyed by the said George T. Craufurd and his wife to one Albert B. Berry, of said county, sup-
posed to contain and include, for the property hereby conveyed, the
201 quantity of two hundred acres, more or less, so as to include the dwelling-
house and out-houses on said estate. And the said parties of the first part do hereby covenant and agree to and with the said party of the second part that they will jointly and severally warrant and defend unto him, the said party of the second part, all the aforesaid two hundred acres of land, being part of lot No. 1, as aforesaid, against all and every person or persons claiming the same or any part thereof by, through, from, or under them or any of them. And the said parties of the first part do hereby further covenant and agree with the said party of the second part that they will jointly and severally hereafter

execute, acknowledge, and deliver to the said party of the second part such deed or deeds as his counsel, learned in the law, may require or advise for the more effectual conveying and assuring to him, the said party of the second part, in fee simple, a clear and unencumbered title to the said two hundred acres of land, free, clear, and discharged of any liens, judgments, or mortgages created thereon by the said George T., either by himself or in co-operation with his aforesaid wife or mother, or of any potential right of dower therein which does now or may hereafter be supposed to belong to his aforesaid wife, the said Josephine Craufurd, or of any right, estate, or interest which the said Elizabeth Taylor, otherwise called Craufurd, the natural mother of the said George T., and a party grantor to this deed, may be entitled to under the last will and testament of the said Thomas B. Craufurd, or otherwise.

202 In testimony whereof, the parties hereunto have set their hands and seals the day and year first hereinbefore written.

GEORGE T. CRAUFURD. [SEAL.]
JOSEPHINE CRAUFURD. [SEAL.]
her
ELIZABETH + CRAUFURD. [SEAL.]
mark.

Witnesses:
JNO. B. HILL.
LIBTRUM MITCHELL.

Witnesses to the signature of Elizabeth Taylor, otherwise called Elizabeth Craufurd:
DANIEL C. DIGGS.
JNO. H. SANSBURY.

STATE OF MARYLAND,
Prince George's County, to wit:

I hereby certify that on this twenty-fourth day of April, in the year of our Lord one thousand eight hundred and fifty-eight, before the subscriber, a justice of the peace of the State of Maryland, in and for Prince George's county, personally appeared George T. Craufurd and Josephine Craufurd, his wife, and party grantors to the aforegoing deed, and did severally acknowledge the said deed to be their several and respective act.

THOMAS CLEMENTS, *J. P.*

STATE OF MARYLAND,
Prince George's County, to wit:

I hereby certify that on this twenty-fourth day of April, 1858, before the subscriber, a justice of the peace of the State of Maryland, in and for Prince George's county, personally appeared Elizabeth Taylor, otherwise called 203 Elizabeth Craufurd, party grantor to the aforegoing deed, and did acknowledge the said deed to be her act and deed.

T. R. BROOKES, *J. P.*

Enrolled the 26th day of April, 1858.

STATE OF MARYLAND,
Prince George's County, sct:

I hereby certify that the aforegoing deed is truly taken and copied from liber C. J. M., No. 2, folio 291, &c., one of the land record books for Prince George's county.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the circuit court for Prince George's county, this 13th day of November, 1862.

FREDERICK SASSCER,
Clerk of Circuit Court for P. G. County.

Bill of sale from George T. Craufurd to Elizabeth Taylor.

Know all men by these presents, that I, George T. Craufurd, of Prince George's county, in the State of Maryland, for and in consideration of the natural love and affection which I have towards my mother, Elizabeth Taylor, and for the purpose of securing her better maintenance and support, have given, granted, transferred, assigned and conveyed, and do by these presents
204 give, grant, transfer, assign and convey unto the said Elizabeth Taylor,
her executors, administrators and assigns, negro girl Amelia, aged about 16 years, a slave for life, and I hereby warrant and defend the said negro girl to be a slave for life, and the full and entire property of the grantee herein named, according to the object and true intent hereof.

In witness whereof, I have hereunto set my name and affixed my seal, this 12th day of November, one thousand eight hundred and fifty-six.

GEORGE T. CRAUFURD. [SEAL.]

Signed, sealed and delivered in presence of—the words Amelia and November being first interlined—

DANIEL C. DEGGES,
C. R. BENSON.

STATE OF MARYLAND,
Prince George's County, to wit:

Personally appeared, on this 12th day of November, 1856, before the undersigned, a justice of the peace of said State, in and for Prince George's county, George T. Craufurd, who is personally known to me to be the party grantor to the above deed of gift, and acknowledges the same to be his act and deed, for the purposes therein mentioned.

C. R. BENSON, *J. P.*

Enrolled the 13th day of November, 1856.

205 STATE OF MARYLAND,
Prince George's County, sct:

I hereby certify that the aforegoing was truly taken and copied from liber C. S. M., No. 1, folio 410, &c., one of the land record books of Prince George's county.

In testimony whereof, I hereunto subscribe my name and affix the seal of the circuit court for Prince George's county, this 13th day of November, 1862.

FREDERICK SASSCER,
Clerk of the Circuit Court for Prince George's County.

Bill of sale from Daniel R. Wall to Elizabeth Taylor.

Know all men by these presents, that I Daniel R. Wall, of Prince George's county, in the State of Maryland, for and in consideration of the sum of ten dollars, current money, to me in hand by Elizabeth Taylor, of the county and State aforesaid, at and before the sealing and delivery of these presents, the receipt whereof I, the said Daniel R. Wall, do hereby acknowledge, have granted, bargained and sold, and by these presents do grant, bargain and sell unto the said Elizabeth Taylor, her executors, administrators, and assigns, the following property hereinafter mentioned; that is to say, one wagon and harness,
206 one large bay horse, about nine years old, one sorrel horse, about twelve
years old, all and singular which said property are now remaining, standing and being in my possession:

To have and to hold all and singular the said property, and other the premises bargained and sold, or mentioned and intended, so to be, to the said Elizabeth Taylor, her executors, administrators and assigns, forever. And I, the said

Daniel R. Wall, for myself, my heirs, executors, and administrators, all and singular the said property and premises unto the said Elizabeth Taylor, her executors, administrators and assigns, against me, the said Daniel R. Wall, my executors, administrators, and against all and every other person or persons whatsoever, shall and will warrant and forever defend by these presents, of all and singular which said property and other the premises, I, the said Daniel R. Wall, have put the said Elizabeth Taylor in full possession by delivery to her, the said Elizabeth Taylor, one sorrel horse, at the sealing and delivery of these presents, in the name of the whole premises hereby bargained and sold, or mentioned and intended so to be, unto the said Elizabeth Taylor as aforesaid.

In witness whereof, I have hereunto set my hand and affixed my seal this 20th day of March, anno Domini 1857.

D. R. WALL. [SEAL.]

Signed, sealed and delivered in the presence of—
T. R. BROOKS.

207 STATE OF MARYLAND,
Prince George's County, sct:

Be it remembered, and it is hereby certified, that on this 20th day of March, eighteen hundred and fifty-seven, before the subscriber, one of the justices of the peace of the State and county aforesaid, personally appears Daniel R. Wall, he being known to me to be the person who is named and described as, and professing to be a party to the foregoing bill of sale, or instrument of writing, and doth acknowledge the said instrument of writing to be his act and deed; and also, at the same time and place, came before me, the subscriber, justice as aforesaid, Elizabeth Taylor, and made oath on the Holy Evangely of Almighty God that the aforegoing bill of sale is just and bona fide, and the matters and things therein set forth is true and bona fide, as therein set forth.

Given under my hand and seal the day and year aforesaid.

T. R. BROOKES, *J. P.* [SEAL.]

Enrolled the 21st day of March, 1857.

STATE OF MARYLAND,
Prince George's County, sct:

I hereby certify that the aforegoing is truly taken and copied from liber C. S. M., No. 1, folio 521, &c., one of the land record books of Prince George's county. In testimony whereof, I have hereunto subscribed my name and affixed the seal of the circuit court for Prince George's county, this 13th day of November, in the year of our Lord one thousand eight hundred and sixty-two.

FREDERICK SASSCER,
Cl'k of C't C't for P. G. County.

208 *Bill of sale from Anna V. Craufurd to Elizabeth Taylor, otherwise Elizabeth Craufurd.*

STATE OF MARYLAND,
Prince George's County, sct:

I, Anna V. Craufurd, of the State and county aforesaid, in consideration of the sum of three hundred and fifty dollars, paid me by Elizabeth Taylor, otherwise called Elizabeth Craufurd, of the State and county aforesaid, do hereby bargain and sell to the said Elizabeth Taylor, otherwise called Craufurd as aforesaid, the following property, to wit:

One negro boy, George Lee, aged about nine years, and a slave for life.

Witness my hand and seal this 26th day of July, eighteen hundred and fifty-eight.

Test: ANNA V. CRAUFURD.

STATE OF MARYLAND,
Prince George's County, to wit:

I hereby certify that on this 26th day of July, 1858, personally appeared before the subscriber, a justice of the peace for the State and county aforesaid, and acknowledged the foregoing bill of sale to be her act and deed; and at the same time came before me, the subscriber, Elizabeth Taylor, otherwise called Elizabeth Craufurd, and made oath on the Holy Evangely of Almighty God that the aforegoing bill of sale was given for a just and bona fide consideration.

209 Given under my hand this day and year before mentioned.

T. R. BROOKES, *J. P.*

Enrolled the 11th day of August, 1858.

STATE OF MARYLAND,
Prince George's County, sct:

I hereby certify that the aforegoing is truly taken and copied from liber C. S. M., No. 2, folio 393, one of the land record books for Prince George's county. In testimony whereof, I have hereunto subscribed my name and affixed the seal of the circuit court for Prince George's county, this 13 day of November, anno Domini 1862.

FREDERICK SASSCER,
Clerk of C't C't for P. G. County.

And thereupon the plaintiff prayed the court to instruct the jury as follows:

CRAUFURD
vs. } Plaintiff's prayers.
BLACKBURN.

1st. If the jury find, from the evidence of the witness Elizabeth Craufurd, that she was married at St. Patrick's church, in the city of Washington, by the Reverend Timoleon Fiziac, then the assistant minister of said church, on the first day of September, in the year 1835, to Thomas B. Craufurd; and shall further find, from the evidence, that two of the lessees of the plaintiff were children of Thomas B. Craufurd and witness, born prior to the said marriage,
and subsequently to said marriage were recognized and treated by said
210 Thomas B. Craufurd as his children; that the other two lessees of the
plaintiff were children of Thomas B. Craufurd and Elizabeth Craufurd, were born subsequently to said marriage, then that verdict must be for the plaintiff, provided they shall further find, from the evidence, that the said David Craufurd died intestate, without ever having been married, and not bearing any relations, (other than the lessees of the plaintiff,) or as near a degree as that of nephews and nieces.

2d. The plaintiffs pray the court to instruct the jury, that the declarations of Thomas B. Craufurd, made subsequently to the said alleged marriage, that he had been married to the said Elizabeth Taylor; that the entry of the baptism of George T. Craufurd in the baptismal register of St. Patrick's church, as read in evidence to the jury—that the testimony of the Rev'd Mr. Donelan, as contained in such of the answers and parts of answers *and parts of answers* to interrogatories propounded under the said commission, as were read in evidence to the jury, are, if believed by the jury, facts corroborative of the testimony of said Elizabeth in relation to her statement concerning such marriage, as given in evidence to the jury.

3d. The plaintiffs pray the court to instruct the jury, that a marriage, celebrated as deposed to by the said Elizabeth Craufurd, if the jury shall ~~prove~~ find that it was so celebrated, would not be invalidated because no marriage license had been obtained.

4th. That marriage is, by the law of Maryland, a civil contract, and as such required only the consent of the parties, and such contract of marriage may
211 be inferred from the evidence in this cause, without showing that it was celebrated by a clergyman, or in the face of a church.

5th. If the jury find, from the evidence aforesaid, that the said Thomas B. Craufurd and the witness Elizabeth Craufurd cohabited as man and wife, and that the said Thomas B. Craufurd acknowledged that she was his wife, and that the plaintiff, G. T. Craufurd, and the female plaintiffs in this cause, were his children by said Elizabeth, and as such entitled to be called by the name of Craufurd, and that they were always called by such name of Craufurd, then the presumption of law was in favor of the legitimacy of the said plaintiff, and the burden of proof is on the defendant to overcome such presumption by evidence satisfactory to the jury.

The defendant, conceding the 1st and 3d of said prayers, prayed the court to instruct the jury as follows:

CRAUFURD
v. } Defendant prayers.
BLACKBURN.

1. That it will be competent for the jury, in all the evidence, to find that the cohabitation between Thomas B. Craufurd and Elizabeth Taylor, during the entire period of which cohabitation was illicit, and no marriage was ever solemnized between them; and if the jury shall so find, their verdict ought to be for the defendant.

2. That it is competent for the jury, in all the evidence, to find that no marriage was ever celebrated between the said Thomas B. Craufurd and Elizabeth Taylor; and unless the jury shall find that a marriage was in fact cele-
212 brated between said parties, their verdict ought to be for the defendant.

But the court granted the first and third prayers of the plaintiff, the same being conceded by the defendant, and rejected the remaining prayers offered by the plaintiff, and the prayers offered by the defendant, and instructed the jury as follows:

CRAUFURD'S LESSORS
v. } Court's instructions.
RICHARD S. BLACKBURN.

1st. If the jury find, from the evidence in this case, that Thomas B. Craufurd and Elizabeth Taylor were married at any time, and that two of the lessors of the plaintiff were born subsequent to said marriage, and that ~~they~~ Two of Them were born before said marriage, and that those two so born before marriage were subsequent to its date acknowledged and recognized by said Thomas B. Craufurd as his children; and shall further find that David Craufurd died unmarried and intestate, and without leaving any relative, other than the lessors of the plaintiff, of as near a degree as that of nephews and nieces, then their verdict must be for the plaintiff.

2. The jury may find the marriage from the testimony of Mrs. Craufurd, if they believe her, or ~~find~~ from the acts and declarations of Thomas B. Craufurd, taken in connection with all the other evidence in this case; and that such marriage, to be valid in this State, required only the consent of the parties, and would be valid, although the jury may find that it was not solemnized before any minister of the gospel.
213 And if the jury shall find that at any time Thomas B. Craufurd and Elizabeth Taylor lived together as man and wife; that he acknowledged
Always
and treated her as such; that she was his wife, and the children which she bore during that time as his children, and permitted them to be called by his name, then the presumption of law is in favor of the legitimacy of said children.

But if the jury shall find, from all the evidences in the case, that no marriage ever took place between Thomas B. Craufurd and Elizabeth Craufurd, then their verdict will be for the defendant.

To which ruling of the court the defendant excepted, and this his bill of exceptions is accordingly signed, sealed, and enrolled this 3d day of December, 1862.

WILLIAM F. GILES. [SEAL.]

And now here, at this day, to wit, on the third day of December, in the year of our Lord one thousand eight hundred and sixty-two, the said Richard S. Blackburn produced to the court here the writ of the United States for the correcting of errors of and upon the premises, commanding the record and proceedings of the judgment aforesaid, *of commanding the record and proceedings of the judgment aforesaid*, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next, which said writ of error is in the words and of the tenor following, to wit:

214 UNITED STATES OF AMERICA, *ss:*

[L. S.] The President of the United States to the judges of the circuit court of the United States for the fourth circuit, in and for the Maryland district, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, between John Denn, lessor of George T. Crawford, John H. Sansbury, lately deceased, and Mary E. Sansbury, his wife, Daniel R. Wall and Sarah Jane Wall, his wife, Philip Hill, jun., and Anna V. Hill, his wife, lessors, plaintiffs, and Richard S. Blackburn, defendant, a manifest error hath happened, to the great damage of the said Richard S. Blackburn, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday in December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable R. B. Taney, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-two.

Issued 5 December, 1862.

THO. SPICER, *Cl'k Cir't Ct.*

215 The United States of America to George T. Crawford, Mary E. Sansbury, Daniel R. Wall and Sarah Jane Wall, his wife, and Philip Hill, jun'r, and Anna V. Hill, his wife, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fourth circuit, in and for the Maryland district, wherein Richard S. Blackburn is plaintiff in error, and John Denn, lessor of you, and John H. Sansbury, since deceased, defendants in error, to show cause, if any there be, why the judgment rendered against the said Richard S.

Blackburn in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness my hand and seal this eleventh day of December, in the year of our Lord one thousand eight hundred and sixty-two.

WILLIAM F. GILES. [SEAL.]

I acknowledge notice of the above citation, Dec. 13, 1862.

R. J. BRENT

216 *Bond.*

Know all men by these presents, that we, Richard S. Blackburn, of the State of Virginia, and Sarah Forrest and Mary M. Kearney, of Prince George's county and State of Maryland, are held and firmly bound unto George T. Craufurd, Mary E. Sansbury, Daniel R. Wall, and Sarah Jane Wall, his wife, and Philip Hill, junior, and Anna V. Hill, his wife, in the full and just sum of ten thousand dollars, current money, to be paid to the said George T. Craufurd, Mary E. Sansbury, Daniel R. Wall, and Sarah Jane, his wife, and Philip Hill, junior, and Anna V., his wife, their executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves and every of us, our and every of our heirs, executors and administrators, jointly and severally, for and in the whole, firmly by these presents. Sealed with our seals and dated this ninth day of December, in the year eighteen hundred and sixty-two.

Whereas, at a circuit court of the United States for the fourth circuit and district of Maryland, begun and held in the city of Baltimore on the first Monday in November, in the year aforesaid, in a certain action of trespass and ejectment therein depending, between John Denn, lessor of the said George T. Craufurd, John H. Sansbury, who is since deceased, and the said Mary E. Sansbury, his wife, Daniel R. Wall, and Sarah Jane, his wife, and Philip Hill, junior, and Anna V., his wife, plaintiff, and the said Richard S. Blackburn, defendant, the said John Denn, by the judgment of the said court, recovered against the said Richard S. Blackburn his term aforesaid yet to come, of and in
the several tracts or parcels of land in the record of the aforesaid judgment
217 mentioned and described, and the sum of one cent current money,
by the jury in the said action assessed for his damages sustained by reason of the trespass and ejectment aforesaid, together with his costs of suit in said action laid out and expended:

And whereas the said Richard S. Blackburn is about to sue forth the writ of the United States for the correcting of errors of and in the judgment aforesaid, and a citation directed to the said John Denn, lessor as aforesaid, citing and admonishing him to be and appear before a Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next, to show cause, if any there be, why the said judgment so as aforesaid rendered should not be corrected, and why speedy justice should not be done to the parties in this behalf:

Now the condition of this obligation is such, that if the said Richard S. Blackburn shall not well and truly prosecute with effect his said writ of error, and also satisfy and pay unto the said George T. Craufurd, Mary E. Sansbury, Daniel R. Wall, and Sarah Jane, his wife, and Philip Hill, junior, and Anna V., his wife, their executors, administrators or assigns, in case the said judgment shall be affirmed, as well all and singular the damages, costs and charges so as aforesaid adjudged to their lessee by the said circuit court, as also all costs and damages that shall or may be awarded by the said Supreme Court, to be paid by him, then this obligation to be and remain in full force and virtue; otherwise of none effect.

RICHARD S. BLACKBURN. [SEAL.]
218 SARAH FORREST. [SEAL.]
MARY M. KEARNEY. [SEAL.]

Signed, sealed and delivered in presence of—
J. L. HENRY,
KATE KEARNEY HENRY, for Sarah Forrest.
As to the execution by R. S. Blackburn, SARAH FORREST.
J. L. HENRY.
C. M. HINESMELL, for Mrs. Kearney.

I hereby certify that I am acquainted with the sureties to the above bond, and that they are fully sufficient to answer the penalty of said bond.

W. CALLAN, *J. P.* [SEAL.]

WASHINGTON CITY, D. C.

I concur with Mr. Callan; the sureties in the above bond I think, from my knowledge of their property, good for the amount thereof.

JOS. H. BRADLEY,
10th Dec'r, 1862. *Washington City.*

Bond approved, Decem. 11th, 1862.

WILLIAM F. GILES.

219 In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I hereunto subscribe [SEAL.] my name and affix the seal of the said circuit court, this fourth day of December, in the year of our Lord one thousand eight hundred and sixty-three.

THO. SPICER, *Clerk.*

Filed December 10, 1863.

IN SUPREME COURT OF THE UNITED STATES.

RICHARD S. BLACKBURNE

vs.

GEORGE T. CRAUFURD AND OTHERS, *Lessee.*

STATEMENT AND POINTS FOR PLAINTIFF IN ERROR.

Dr. David Craufurd, late of Prince George's County, Maryland, died in the month of November, 1859, seized and possessed of the lands for recovery of which this action is brought.

On the 2 October, 1860, this action was instituted in the Circuit Court for Prince George's County, Maryland. It was thence removed into the Circuit Court of the United States for the fourth Circuit and District of Maryland, and the writ of error brings up for review a judgment of the last named Court, rendered at its November term, 1862, in favor of the Plaintiff.

George T. Craufurd and his sisters (the female lessors) claimed title as the children of Thomas B. Craufurd, a deceased brother of the intestate last seized. They were admitted to be the children of Thomas, by one Elizabeth Taylor, and if their father and mother were married, and if they were the legitimate offspring of that marriage, then their title as heirs-at-law of the intestate was unquestionable. Blackburne on behalf of remoter collaterals insisted that those lessors were the fruits of an illicit intercourse between their father and mother, and upon this hypothesis the defendant was clearly entitled to the verdict and judgment. The sole question at issue therefore was marriage *vel non* between Thomas B. Craufurd and Elizabeth Taylor.

First exception commencing on page 7 of printed Record.

At the trial of the action the plaintiff offered to read to the jury the deposition of the Rev. John P. Donelan, a witness examined on the part of the plaintiff under a commission to the State of Illinois.

The deposition is given on page 10 of the printed Record. The exceptions to parts thereof and the rulings of the Court thereon on page 11 of the printed Record.

The objections now relied on are:

1. That the Court permitted the plaintiff to read to the jury the declarations of a Mrs. Evans to the effect that Elizabeth Taylor, her sister, was married to Thomas B. Craufurd, although there was no evidence whatever to shew that she was related by blood or marriage to Craufurd, and through him to the intestate whose estate was in controversy.

In support of the objection we refer to 1 Greenl. Ev. § 103. "The rule of admission is, therefore, restricted to the declarations of *deceased* persons, who were *related by blood or marriage*, to the person, and, therefore, interested in the SUCCESSION."

In 13 Ves. 140, Vowles *vs.* Young, where one of the parties traced title by descent through Mary Noble, the adverse party offered declarations of her husband, deceased, to show that she was illegitimate. Those declarations were admitted on the ground that the husband, by marriage, became a member of the family of the wife. But neither the argument of counsel nor the reasoning of the Court will justify the inference that a brother or other remoter member of the family of the husband would have been admitted to testify in regard to the wife's legitimacy or any other question of pedigree in a cause involving a succession in the family of the wife.

This extension of the theory was first suggested by Lord Brougham in

2 Russ & My. 147, Monkton *vs.* Attorney General.

Lord Brougham here held that in order to render the declarations admissible, it would be sufficient to show that the declarant was of the family of the claimant. He considered the rule would be useless and nugatory, if at the same time it was required that the declarant should be shown to be of the family of the intestate, whose succession was in question. But the difficulty and absurdity suggested by Lord Brougham is removed, by requiring that the person making the declaration shall be of the family of the intestate, as expressly stated in Greenleaf. Thus the declaration of a member of the family of Craufurd would be admissible to establish the right of George as a member of that family; and the declaration of a member of the family of Evans, would be admissible to establish his right as a member of the family of Evans. But it is as difficult upon principle as it is impossible by other authority to maintain the proposition that reputation in the family of Evans is admissible upon a question of pedigree in the

But again, before the declaration of a member on one family can be admitted as evidence of traditions of another family, it must be shown by evidence *aliunde* that the two families are connected together by marriage. This *fact* of marriage is the condition which renders the declaration admissible for any purpose, and cannot be established by the declaration itself.

It is clearly settled that the declarations of a third person are not admissible as proof of a partnership between himself and the Plaintiff or Defendant to the suit. The fact of partnership must be proved by independent testimony; and when the privity between the declarant and the party is thus established, the declarations touching the subject of the suit become admissible in evidence.

In this case the declaration of Mrs. Evans is relied on to establish the *fact* of marriage, and the fact of marriage is presupposed in order to render that declaration admissible as evidence of marriage.

family of Craufurd, merely by the fact that some member of the family of Evans (not the declarant) had inter-married with some member of the family of Craufurd, other than the *propositus* whose succession is in question.

In opposition to the opinion of Lord Brougham, we have the opinion of Vice Chancellor Shadwell, expressed in the same case. And on the hearing of the cause on appeal, Lord Cottenham (then Lord Chancellor) expressly waived all discussion of the subject, in terms which betray his dissatisfaction with Lord Brougham's theory. 10 Clark & Fin. 471. 500.—Robson *vs.* Attorney General.

Cooper, 39, Edwards *vs.* Harvey, by Sir Wm. Grant, is directly contrary.

On the death of Edward, Lord Vaux, the succession to the peerage came in question. In order to prove the death of William, who was a brother of Edward, the claimant produced from the muniments of Lord Banbury, deceased, a paper in the handwriting of a former steward of Lord Vaux, and professing to show the state of the then surviving members of the Vaux family. Lord Banbury was one of the sons of Lady Vaux by her first husband, and Lord Vaux, who was childless, settled on him and his brother all his estates, subject to a jointure for his wife. This paper was rejected on the ground that it did not appear to be signed by any of the members of the *Vaux* family, nor to have been open to *their* inspection.

5 Cl. & Fin. 539. The Vaux peerage.

The declarations of a step-son therefore, are not evidence in regard to the pedigree of the family into which he has been ingrafted by marriage—and the reason given is, that declarations are admitted as evidence of reputation in the family whose succession is in question—and therefore those only can speak whose relations with that family are such as to have made them acquainted with the reputation accredited in that family.

2. The same witness proved that a Register of marriages was kept at S. Patrick's Church whilst he was the Assistant Rector—that is between the years 1836 and 1841; and that the same Register had been used for some time before; and that he has "*an imperfect recollection* of having seen at some time in said Register an

was made
hether by the Rev Mr Fixiac, Father Matthews or
ome other person I do not remember

entry of the marriage between said Thomas B. Craufurd and Elizabeth Taylor."✗

This supposed Register was not produced, nor was its absence attempted to be accounted for, by any other witness than the Rev. Mr. Boyle, who proves that he is the Assistant Pastor of S. Patrick's Church, and had been such since 1853, "and that he has searched frequently for the marriage Registers of said Church, but had been unable to find any of date earlier than the year 1840."

Now this witness does not say that he is the custodian of the Church Registers—nor that he had or has access to the usual repository of those Registers—nor does he show how, or to what extent, or in what places his researches were made.

The materiality of this detail is made apparent by the testimony of Father Donelan, who says that when he left S. Patrick's in 1841, the Register was in the custody of Father Matthew, (the Pastor) and *ought now to be in the custody of the present Pastor of said Church.* And even Father Boyle concedes that it is the duty of the *Pastor* to keep the Registers.

Hence the application ought to have been made to the *Pastor*, and not to the *Assistant Pastor;* and the Pastor is the only person who can account for the non-production of the supposed Registers.

Greenl. Ev. § 558.

There is no law requiring a Registry of Marriages to be kept in Roman Catholic Churches; and therefore the supposed Register itself, if produced, would not be evidence *per se* of the fact of any matter entered therein.

A sworn copy from such a Register would not be admissible; and *a fortiori* the clouded recollection of a witness, confessed by himself to be an imperfect recollection, that at some period distant back over twenty years, he saw a Book purporting to be a Register, and a particular entry in that Register ought not to be admitted to establish the fact of the supposed entry, or even the existence of the supposed Register.

Assuming for the sake of the argument that an entry in such a Register might be read from the Registry itself, as a declaration in writing made by a person in the exercise of his professional employment—an hypothesis, however, which is directly at war with the ruling of the House of Lords in the Sussex Peerage case, 11 Cl. & Fen. 103, 111, 112, 113—it would be necessary in order to render it admissible to show:

1. That the entry was made by the person who officiated on the occasion.

2. That the entry was made recently after the event which is registered.

3. That the person making the entry is dead.

In support of these views it will be sufficient to refer to the decision of this Court in Gaines *vs.* Relf, 12 How. 535. And to the opinion of Judge Wayne in pages 569, 570, 571, 572, which exhausts the subject.

In all those particulars the evidence admitted is defective. At a subsequent stage of the cause it was given in evidence by the plaintiff that the supposed celebrant was Father Feziac, who was actually examined as a witness, under a commission, and declared that he had no recollection of having ever celebrated the rites of marriage between the parties—*and that no Registry of Marriage was kept at S. Patrick's Church whilst he was an assistant Pastor there*; and that he kept a private Register of marriages celebrated by him, and that upon inspection thereof he discovered no entry of any such marriage as is supposed. Those facts strongly illustrate the wisdom of the conditions under which evidence of imaginary entries in suppositious Registers is admitted.

1 Peters, 600, Taylor *vs.* Riggs, "where a written contract is to be proved, not by itself but by parol testimony, no *vague uncertain recollection* concerning its stipulations ought to supply the place of the written instrument itself."

Second exception on page 12 of printed Record.

The plaintiff, to support the issue joined, further offered evidence by the said Elizabeth Taylor and another witness, of the alleged marriage. According to the first of those witnesses, her intercourse with Thomas B. Craufurd commenced in 1828 or 1829, and continued illicitly until the time of the baptism of her second child, by him named Sarah Jane, when his alleged marriage was celebrated at St. Patrick's Church. Father Feziac (of whom we shall hear more hereafter) is stated to have been the minister who officiated on the occasions of the baptism and of the marriage. And then for the purpose of fixing the date of the alleged marriage, the plaintiff produced a manuscript book, and offered proof that it was the official Register of baptisms of S. Patrick's Church, and offered to read from that book an entry of the baptism of the said child, and to prove that the same was in the hand-writing of Father Feziac.

The defendant objected. But the Court allowed the entry to be read.

As the Register was not required to be kept by law, it was not evidence *per se* of the truth of the entry. Nor was the entry proposed to be read made evidence by proof that it is in the handwriting of Father Feziac.

Father Feziac ought to have been produced and examined on this point.

In further support of the objection, reference is made to the points stated already under the first exception.

Third exception on page 13 of printed Record.

The plaintiff then offered to read from the Register the following entry:

1837, July 30, George Thomas, son of Thomas Craufurd and Elizabeth Taylor his wife, born 7 September, 1836.

Sponsors, John and Sarah Evans.

And offered proof that the same was in the hand-writing of the Rev. John P. Donelan, and that he was, at the supposed date of said entry, the Assistant Pastor of S. Patrick's Church. (*Father Donelan is the individual whose deposition had already been given in evidence.*)

The Defendant objected to the reading of the entry for any purpose. But further, if it was admissible at all, it could be read only as evidence of the fact of baptism, and of the time thereof, and was not evidence of the relation supposed to exist between the said Craufurd and Taylor—it not being shown that those persons were, or that either of them was present on the occasion of the baptism, or authorized said entry—and especially as the witness produced and examined by the plaintiff, proved that it was not usual for the parents to assist at the baptism of his or her child in the Roman Catholic Church.

The Court overruled those objections, and permitted the entry to be read in evidence.

It is now objected—

1. There was no law requiring the Register to be kept, and therefore the entry was not admissible as evidence *per se*.

2. The Rev. Mr. Donelan was alive and accessible, and ought to have been examined touching this matter.

3. If examined, he could have spoken only to the fact of baptism, as there is nothing shewn from which it can be inferred

that the relation of husband and wife between Mr. Craufurd and Miss Taylor was admitted by either of those parties—or was known as a fact by him.

Fourth exception on page 14 of Record.

The plaintiff then proved various acts and declarations of the said Thomas B. Craufurd—all tending to prove that the said Elizabeth Taylor was his lawful wife And then the defendant, to maintain the issue joined on his part, produced a transcript from the records of the Orphans Court of Prince George's County, Maryland, and proposed to read therefrom the verdict of the Jury and the order of the Orphans Court thereon, on certain issues sent from the said Orphans Court to the Circuit Court for said County, and thence removed into the Circuit Court for Charles County, and which were tried by a Jury under direction of the last named Court at May term, 1860; and also to prove that George T. Craufurd, one of the lessors of the plaintiff, was the party plaintiff to said issues, and that the defendant to this action was the party defendant to the said issues.

From this transcript it appears that on the 12 January, 1860, the said Blackburne appeared before the Orphans Court of Prince George's County, and made an oral application for letters of administration on the personal estate of the intestate, Dr. David Craufurd. On the same day, George T. Craufurd appeared in Court, and in writing denied the right of Blackburne to administration, and claimed that letters ought to be granted to him as the nearest of kin to the intestate. And thereupon the Court *ordered* that the said Blackburne and Craufurd respectively file their petitions in writing for grant of letters in this case, and that they severally answer the said petitions upon oath or affirmation, and that plenary proceedings be had thereon. *Vide page* 15 *of printed Record.*

Blackburne's petition will be found on *page* 16. Craufurd's answer thereto and his petition on *page* 17, and Blackburne's answer to the petition of Craufurd on *page* 18 *of printed Record.*

In brief, Craufurd claimed that he was the only son of Thomas B. Craufurd, deceased, (who was the brother of Dr. David Craufurd) by Elizabeth Taylor, his lawful wife, and as such, nearest of kin to the intestate. And Blackburne denied that any marriage was ever celebrated between the putative father and the mother of Craufurd, the petitioner, and insisted that as the illegitimate offspring of the said Thomas B. Craufurd, he was not of kin to the intestate. And thus displacing the title of the petitioner Craufurd, and of his sisters as illegitimates, he, Blackburne, insisted that he was nearest of kin to the intestate, and as such entitled to administration. In other words, the issue was in substance marriage *vel non* between Thomas B. Craufurd and Elizabeth Taylor.

On the 24 January, 1860, George T. Craufurd filed his supplemental petition, and thereby required that issues be framed by the Court *touching the matter in controversy* between him and the said Blackburne; and submitted that the following issues be sent to the Circuit Court for Prince George's County for trial, viz:
1 1. Whether the petitioner Craufurd is one of the next of kin
to the said David Craufurd, on the part of the father of the said
2 David Craufurd. 2. Whether there is any male other than the
petitioner Craufurd, of the next of kin of the said David Craufurd,
on the part of the father of the said David Craufurd.

On the same day the Orphans Court ordered that the aforegoing two issues asked for by the petitioner in his aforesaid supple-
3 mental petition, and the additional issue offered by the said
Richard S. Blackburne as the third issue, to wit: Third, *whether the said Thomas B. Craufurd was ever lawfully married to the said Elizabeth Taylor, either before or after the birth of the said George T. Craufurd?* be transmitted to the Circuit Court for Prince George's County for trial according to the Act of Assembly in such case made and provided. *Vide pages* 29 *and* 30 *of printed Record.*

The issues being thus sent to the Circuit Court for Prince George's County, were thence removed into the Circuit Court for Charles County; where they were tried at May Term 1860. And the jury thereupon found by their verdict, that the said George T. Craufurd is not one of the next of kin to the said David Craufurd on the part of the father of the said David Craufurd; and that *the said Thomas B. Craufurd, was never lawfully married to the said Elizabeth Taylor either before or after the birth of the said George T. Craufurd;* and therefore they found for the Defendant on all said issues. *Vide page* 52 *of printed Record.*

Various exceptions had been taken by the Plaintiff to the rulings of the Court in the progress of the trial; and after verdict the case was taken by appeal to the Court of Appeals. A judgment of affirmance on this appeal was rendered. And a transcript of the record of affirmance was transmitted to the Orphans Court of Prince George's County; and thereupon the said Court granted administration on the personal estate of the said Dr. David Craufurd to Blackburne. *Vide page* 65 *of printed Record.*

This evidence was offered alternatively.

1. As an estoppel on the question of marriage against all the lessors of the plaintiff.

2. As an estoppel against George T. Craufurd, one of the said lessors.

3. As *prima facie* evidence to support the issue on the part of the defendant.

But the Court being of opinion that the evidence so offered, was inadmissible for any of the purposes indicated by the defendant, refused to permit said verdict and order to be read to the jury.

The plaintiff in error insists that the evidence tendered, ought to have been admitted as conclusive on the point of *marriage vel non*, against the plaintiff, claiming as lessor of George T. Craufurd.

The rule as stated by Lord Ch. J. DeGrey, in the case of the Duchess of Kingston 2 Smith's leading cases 573, (424,) is, "that the judgment of a Court of concurrent jurisdiction directly upon the point is as a plea a bar, and as evidence conclusive, between the same parties, upon the same matter, directly in question in another Court."

To create the estoppel, there must be identity of *parties*, and of matter of *fact in issue*, but not in regard to the object of the suit.

3 East, 346, Outram *vs.* Morewood, Lord Ellenborough states, that a recovery in any one suit, upon issue joined on matter of title, is equally conclusive upon the subject matter of such title in another suit.

And again it is not the *recovery*, but the *matter alleged* by the party, and upon which the recovery proceeds, which creates the estoppel. The *recovery* of itself in an action of trespass, is a bar to the recovery of damages for the same injury; but the *estoppel* precludes parties and privies from contending to the contrary of that point, or *matter of fact*, which having been once distinctly put in issue by them, has been on such issue joined, solemnly found against them.

And in 24 How. 342, this Court quotes from Buller ' it is not necessary that the verdict should be in relation to the *same land*; for the verdict is only set up to prove the *point* in question."

3 Cowen, 120, Gardner, *vs.* Buckley, where, in an action on a note, the jury having found fraud, in the transaction out of which the note originated, that verdict was held to be conclusive evidence of the fraud, in a subsequent action on one other note, given in the same transaction.

4 Comst. 71, Doty *vs*. Brown.

5 Sandf. S. C. 140.

The cases in this Court are equally conclusive.

24 How. 233, Thompson *vs*. Roberts.

In a suit for foreclosure, the defendant alleged the mortgage was founded on fraud. The decree for a sale in that suit, was held to estop the defendant from relying on the same defence, in a subsequent action brought on the notes, for security of which the mortgage had been given.

7 How. 198, Smith *vs*. Kernochen, a decree dismissing a bill for foreclosure, on the ground that the mortgage was void, was held to be a bar to a recovery in ejectment brought by a party claiming under the same mortgage.

1 How. 134, Bank of United States *vs*. Beverly.

The parties were held bound by the conclusions of law and fact made by this Court in a former case, reported in 10 Peters, 562. The parties to the two suits were substantially the same, and the suits involved questions touching the relative rights of creditors and devisees; but they were brought *diverso intuitu*. The object of one being to protect a part of the testators real estate from sale; the object of the other, being to subject the residue of his estate, to sale for payment of his debts.

6 Wheat. 109, Hopkins *vs*. Lee.

Lee sued Hopkins on a covenant to convey. Hopkins pleaded that Lee had not performed a condition which was to be precedent to the conveyance. A decree in favor of Lee in a cause instituted against him by Hopkins, to enforce performance of that condition, was adjudged to be conclusive on the issue of performance.

Where in a suit for administration the Ecclesiastical Court adjudged the plaintiff was illegitimate, that decision was held conclusive on that point in a suit subsequently brought in chancery, for distribution of the estate.

1 Phill. 582, Barrs *vs*. Jackson.

Upon principle, the first adjudication must be equally conclusive in ejectment, for the real estate of the intestate.

In 14 Md. 532, Warford *vs*. Colvin, it was declared that the probate of a will disposing of real and personal estate, is *conclusive* as to the *personalty*, but only *prima facie* evidence as to the *realty*. The distinction, however, was rested by the Court, expressly on the Act of 1831, chap. 315, which declares that "said probate as concerns real estate, shall be deemed and taken *only* as *prima facie* evidence of such will." In the absence of this express provision, it is very evident from the texture of the whole opinion, that the Court would have held that, where on a caveat by the next of kin, against the admission to probate of a will professing to dispose of real and personal estate, issues are framed to be tried by a jury, who find that the testator was of sound mind at the time of publishing the will, the devisee, may rely on such finding, as conclusive of the question of sanity in the trial of an ejectment brought against him by the same next of kin, in his character as heir at law. And the case is therefore, relied on as an authority, that where in any proceeding before the Orphans Court, other than a case of probate, issue is joined on a *precise fact,* the verdict on that issue, will be conclusive on the *precise fact so found,* coming in issue between the same parties in any other cause.

2. The estoppel thus raised against George T. Craufurd is equally available against the other lessors of the plaintiff, who claims under a *joint* demise of Craufurd, and of his sisters and their husbands.

Where several sue, a bar to the recovery of any one of the plaintiffs will defeat the action of all, just as a plea pleaded by several, if bad as to one, is bad altogether.

Chitty Pl. 546.
7 Cra. 156, Marstella *vs.* McClean.

In trespass by several joint tenants for mesne profits, the plea of limitations which was good as to one, was held to be a bar as to all.

And in order to support the jurisdiction of the Courts of the United States in suits between citizens of different States, it is settled that several persons suing as the party plaintiff, must show in each a capacity to sue—and in each of several persons sued as the party defendant, a capacity to be sued.

3 Cranch, 267, Strawbridge *vs.* Curtis.
3 Taunt. 120, Doe *vs.* Chaplin.

On demise by four the plaintiff must show a right of entry in all.

7 Wend. 125, Jackson *vs.* Vail.

Declarations of one of several lessors are admissible against plaintiff in ejectment.

Fifth exception commences on page 67 of the printed Record.

The defendant further to maintain the issue on his part offered in evidence the deposition of the Rev. Timoleon Feziac, (who it will be recollected *is the person designated by Elizabeth Taylor as the minister officiating on the supposed occasion of her marriage with Thomas B. Craufurd.*)

The interrogatories in chief to this witness will be found on page 67, the cross-interrogatories on page 68. The answers of witness on pages 74, 75 and 76 of printed Record.

In his examination-in-chief in substance he states that he is a priest in communion with the Roman Catholic Church, and that he was officiating priest at S. Patrick's Church from 1831 to 1836.

To the 3d interrogatory. Did you, or did you not at any time during the months of July, August or September, in the year 1835, celebrate the rites of marriage between Thomas B. Craufurd and Elizabeth Taylor? He answers, I cannot recollect.

To the 4th. Was or was not any Register kept or made of marriages celebrated at said Church, or by the priest officiating at said Church during the months of July, August and September, 1835? If yea, then say what has become of said Register? He answers—no official Register of marriages was kept, but for my own satisfaction I used to retain the names of persons whom I married. But the names of Thomas B. Craufurd and of Elizabeth Taylor do not appear there. But this is not a proof that I have not married them, because I could have forgotten to write their names down.

To the 5th. If you shall say in answer to the last interrogatory that a Register of marriages so celebrated was made, and that the same is in your possession, then produce the said Register before the Commissioner. Inspect the said Register, and especially those parts thereof which contain entries of marriages celebrated in the months of July, August and September, 1835, and state whether or not there is on said Register any entry of or relating to a marriage between the said Thomas B. Craufurd and the said Elizabeth Taylor? He answers, my reply to the fourth interrogatory is my reply to this one.

To the 6th interrogatory. State whether the said Register Book is a book properly belonging to the said Church, or is a private memorandum book of your own? and if you have no objection to part with the possession of said book, be pleased to deliver it to the Commissioner to be returned with the commission. He answers—I have answered this interrogatory in my answer to the 4th interrogatory, and I decline to deliver the private memorandum which I kept.

To the seventh interrogatory. At the time you officiated in said Church were you or not aware of the law of the said City of Washington requiring parties who proposed to contract matrimony together to obtain a public license for that purpose? And were you or not in the habit of requiring such license from parties who desired you to celebrate the rites of marriage between them? He answers—I was aware of the law in question, and I was in the habit of requiring such license from persons who desired me to celebrate the rites of marriage between them.

To the eighth and concluding interrogatory he answers—I never celebrated the rites of marriage without requiring two witnesses. The two witnesses must of course be produced by the parties pretending that I have married them.

To the 3d cross-interrogatory, state how many marriages you have celebrated in your life, and how many since 1835, as nearly as you can recollect, and especially state whether you can recall the names of those whom you have thus married by means of your power of memory unaided by memorandum? He answers, I don't know, and cannot recall the names.

To the 4th cross-interrogatory, what acquaintance had you with Thomas B. Craufurd, and how often, and where, and on what occasions have you seen and conversed with him? He answers, I had no acquaintance with *them*, and cannot recollect whether I have ever seen or conversed with *them*.

To the 5th. What was your acquaintance with Elizabeth Taylor, the sister of Mrs. Evans, who was the wife of the sexton Evans? and how often? and where have you seen said Elizabeth Taylor? and especially state whether you ever saw her with Thomas B. Craufurd? and whether you ever baptized or christened any of her children, giving their names, and the years in which they were baptized or christened? He answers—I do not recollect having had any acquaintance with Elizabeth Taylor. I can only say I knew Mr. Evans who was sexton in Washington City. This is all I can say.

To the 6th. If you baptized or christened any child or children of the said Elizabeth Taylor, state whether you kept any record or memorandum in which baptism or christening is entered? and if so, produce the same, if in your possession; and if not, state where the same is; and especially state whether you entered her said child or children as natural or illegitimate child of Elizabeth Taylor, or as the child of Thomas B. Craufurd and Elizabeth, his wife? He answers—I answered this question by the preceding; but I never kept any record of children baptized by me. Such a record was, it seems to me, kept at the Church, and I left it there when I returned to France.

To the 7th. State whether or not a marriage record was not kept at S Patrick's Church during the year 1835? and if so, state whether you carried said record with you (when you) left Washington, and if not, where, and in whose charge was it kept, and describe the size and appearance of said record, and state whether you can now recollect all the names recorded therein, and especially whether the names of Thomas B. Craufurd and Elizabeth Taylor are not therein recorded? He answers—I have already answered this interrogatory.

To the 8th. If you have any memorandum in your possession and now produced, state whether the same is the Official Record Book of marriages kept at S. Patrick's Church, and how late it bears date; and if said memorandum is not the official record kept in said church, then state whether you can identify the same as a faithful copy from said Record Book made by yourself without any addition or omission; and especially state whether you can particularly swear that said memorandum produced by you contains each and every entry of marriages made in the Official Record Book while you were at S. Patrick's Church? He answers, I have also answered this question already.

To the 9th. State whether you would not have celebrated a secret marriage between parties living to your knowledge in sin, one or both of whom would only be married on condition that such marriage was to be kept secret? He answers, I never did, indeed.

To the 10th. Are you aware that the penalty on a minister for marrying parties in Washington without a license was merely a pecuniary fine? He answers, I don't recollect whether I was aware of any penalty, but I never married parties without a license.

To the 11th. Have you ever heard Sarah Evans, now deceased, say that her sister Elizabeth had married Thomas B. Craufurd, or any one else? and if so, state when and what she said? He answers, I cannot remember, and of course say nothing about it.

But on objection made by the plaintiff, the Court refused to permit the defendant to read to the Jury, all that part of the said deposition which speaks of the contents of a private memorandum of marriage kept by said witness and not produced.

The answer of witness to the tenth cross-interrogatory.

So much of his answer to the tenth cross-interrogatory as follows the words "any penalty."

The objections to this ruling of the Court are:

1. The witness examined in France was not bound on the requisition of any one of the parties to this suit to surrender his private memorandum book to the commissioner, to be sent with the commission to the United States.

Neither was the witness bound to produce that book before the commissioner for inspection. If he had spoken of an entry actually made in the book, either party might have inspected that entry, with a view to a fuller examination or a cross-examination. But the inspection would have been limited to that very entry. When the witness declared positively there was no entry in the book touching the subject matter of the interrogatory, he thereby negatived the right of the parties to inspect, and the necessity for inspection.

But in fact the witness did not refuse to permit an inspection of the memorandum—nor did any one party, counsel, agent or commissioner, require the surrender of the book for inspection. At the same time it is quite apparent from the texture of the whole deposition, that the witness had the book before him, and had inspected it with a view to refresh his memory in regard to the subject of the examination.

It might *possibly* have been maintained that a witness, declaring that he had no recollection of a supposed by-gone event, would not be permitted to say that he kept a diary in which such event, if it had occurred, would probably have been entered, and that he had been unable to find in that diary any entry touching the subject, or which in any case refreshed his recollection of that subject of inquiry. We concede this *argumenti gratia.* But no such objection was taken. The sole ground of rejection by the Court is, that the book was not produced to the commissioner for the purpose of being returned with the commission.

But the conclusive objection to the ruling of the Court is, that the plaintiff, by his sixth and seventh cross-interrogatory required the witness to inspect his Register, and to answer, whether the marriage of Thomas B. Craufurd and Elizabeth Taylor was recorded therein; and the witness for answer thereto, referred to the answers he had already given on his examination in chief. Now the plaintiff did not object, and could not have objected to the evidence thus given at his own instance. But the Court, in the absence of any such objection, *sua sponte*, excluded the evidence so given on cross-examination by excluding *all that part of the* *deposition* which speaks of a private memorandum of marriage kept by the deponent and not produced.

2. In answer to the ninth cross-interrogatory, whether or not he would marry parties under a supposed state of circumstances, the witness declares that he never did marry parties in those circumstances. Now it is submitted that the answer given was the only answer which would have been admissible. As a question of abstract casuistry, the inquiry was inadmissible. But having been put, it was properly met by the statement on the part of the witness, of the manner in which he had met and disposed of the question in actual experience. An answer to the question, affirmative or negative, would have been nothing more than an expression of opinion. The answer given was opinion carried into practice.

3. The ninth and tenth cross-interrogatories were designed to lead to a solution of another question of abstract casuistry, to wit: whether a man in holy orders can conscientiously evade a law, the sanction whereof is a pecuniary penalty, merely, in the furtherance of a pious object. The witness had already said that he was aware of the law requiring parties who proposed to contract matrimony to obtain a license for that purpose, and that he was in the habit of requiring such license. And now in answer to the tenth cross-interrogatory he says, that he does not recollect whether he was aware that the provisions of that law were enforced by penalty only, *but he never married parties without a license.* This last clause is excluded on the ground it is supposed, that it is not strictly responsive. This may be so But the statement was properly made by the witness in self-vindication, as showing that he is not of the class (unfortunately so numerous) of those who claim the privilege of doing evil, whenever they propose thereby to effect a greater good. And it is evidence for the defendant, inasmuch as it proves, as is also shown by his answer

to the last preceding interrogatory, that the witness could not, without a departure from his settled convictions of duty, have celebrated the rites of marriage between persons circumstanced, as the interrogatories suppose Thomas B. Craufurd and Elizabeth Taylor were circumstanced.

Upon the whole deposition, we have before us a witness scrupulously and conscientiously truthful. And the plaintiff in error is entitled to the full benefit of all that the witness has said. He is likewise entitled to the benefit of every inference which can be made from that deposition, unfavorable to the case of the defendant in error—since it was the duty of the defendant in error to have examined this *supposed* celebrant of a *pretended* marriage, as his witness in chief, and to have given to the plaintiff in error the opportunity, by cross examination, of entering into a more searching inquiry than was admissible on an examination in chief. The plaintiff in error, we repeat, is entitled to the merit of having discovered and placed on the witness stand, the very person by whom the leading incident in his adversary's case—if that can have any foundation in fact—might and ought to have been proved.

Sixth exception commencing on page 79 of the printed Record.

After offering the evidence detailed in the preceding exceptions, the defendant next offered the original will of the said Thomas B. Craufurd, the putative father of George T. Craufurd, and the female lessors of the plaintiff, wherein he gave to the said George T. Craufurd, '*my natural son by Elizabeth Taylor*,'' one-half of his landed estate, and to Mary Elizabeth Craufurd, Sarah Jane Craufurd and Anna Victoria Craufurd, (the female lessors,) ''*my natural children and daughters by the said Elizabeth Taylor*,'' the residue of his landed estate—and to the said George Thomas Craufurd ''*my aforesaid son*,'' one-half of all my negroes and other personal estate, and the other half thereof unto the aforesaid Mary Elizabeth Craufurd, Sarah Jane Craufurd and Anna Victoria Craufurd, ''*my aforesaid natural children and daughters by the said Elizabeth Taylor*.'' Then reciting the probability that ''the said Elizabeth Taylor may be now pregnant with child by me,'' he made provision for such child if born, and further willed and devised ''*that Elizabeth Taylor, the mother of my aforesaid* *children, shall live and have a home at Greenwood (his residence) with the aforesaid children, so long as she shall live single and unmarried.*"

He then produced Thomas F. Bowie, an attorney at law, and proved by him that the draft of said will was prepared by him agreeably to the instructions of the said Thomas B. Craufurd.

And that about three weeks prior to the execution of said last will, the said Thomas B. Craufurd came to the law office of the witness in Upper Marlborough, and had a conversation with witness concerning the proper disposition of his property, so as to secure the same to his children, the lessors of the plaintiff, and asked the advice of said witness on the subject.

That subsequently on the same day, the said Thomas B. Craufurd went with and by the invitation of the witness, to the residence of the witness, and took dinner with him; that he, the witness, had been for many years before that time, and continued up to the death of said Craufurd to be his legal adviser, and had been employed by said Craufurd in all suits in which he had been interested, and has no doubt that if other such controversies had arisen, the witness would in like manner have been retained by said Craufurd as his counsel; but that the said witness had no general retainer to appear in all cases for the said Craufurd, and witness supposed that on the occasion referred to, the said Craufurd rather addressed him as a friend than as counsel, and witness advised with said Craufurd very freely on the subject.

But the result of the conversation on the said occasion, and of the advice then given by him, and finally accepted by the said Craufurd, was the preparation by witness of the draft of said last will, prepared by witness in pursuance of the advice by him given in the course of said conversation, and of the instructions of said Craufurd given to witness after the acceptance of said advice; and that the witness charged and received from said Craufurd a fee of fifty dollars, for his advice so as aforesaid given to said Craufurd on the said occasion, and for the preparation of said will

And the said defendant thereupon asked the witness to state in detail to the jury, the conversation and statements made by said Craufurd at the said interview, touching the disposition of his said property; and offered to give in evidence by said witness that in the course of his conversation. said Craufurd produced to witness drafts of promissory notes signed by said Craufurd for payment of large sums of money to his aforesaid children, the lessors of the plaintiff, and stated that he had been advised to make said promissory notes, by some one or other of his friends, as provisions for his said children, and asked witness what he thought of it.

That witness believed the said Elizabeth Taylor was no more than the mistress of said Craufurd, and that his children by said Elizabeth Taylor were illegitimate, and his advice to said Craufurd was given on that hypothesis; that witness objected to said promissory notes as provisions for said children, as they might lead to difficulties between said children and Craufurd's relations, and explained to said Craufurd that there were three modes by which the said Craufurd might safely provide for said children, to wit:

By deed of his property, reserving a life estate to himself—or by last will—or by marrying said Elizabeth Taylor and legitimatizing said children, and witness strongly expressed his preference for the last named expedient.

That said Craufurd however rejected the proposition that he should marry the said Elizabeth Taylor at once, and with great warmth declared that he would never marry her; and thereupon the witness advised said Craufurd to make a will and to provide for said children; and in accordance with said advice said Craufurd directed witness to prepare the draft of said will, which the said witness accordingly then did agreeably to the instructions of said Craufurd; and said Craufurd especially instructed said witness, in said will to describe the said children as his natural children by the said Elizabeth Taylor, and that in consequence of this express direction of said Thomas B. Craufurd, the said children were described in said will as his natural children.

But the plaintiff objected to the defendants giving in evidence, by the said attorney, any statements made to him by said Craufurd, at the time of his consultation with said witness as aforesaid, *touching the illegitimacy of the lessors of the plaintiff*. And the Court sustained said objection, so far as to refuse to permit the defendant to give in evidence, by said witness, the conversation between said Craufurd and said witness, at the time of the consultation and interviews between them as aforesaid, *touching the illegitimacy of the lessors of the plaintiff*. But allowed the defendant to give in evidence by the said witness, that the said will was prepared by said witness, in accordance with the directions and instructions of the said Craufurd. To the exclusion of the declarations, made by Craufurd on this occasion, the defendant excepted.

It being conceded that the defendant was at liberty to prove that the will was prepared agreeably to the instructions of the testator, it is difficult to conceive of a legal reason for excluding evidence of the testator's explanations of the motives, which influenced him in giving those instructions. The practical effect of discriminating between the instructions, and the declarations made by the testator at the same time, on the same subject, was to persuade the jury, that whilst they were to treat the will as prepared by instructions of the testator, they were to disregard every thing which was said by the testator, in the course of those instructions, on the subject of the illegitimacy of the lessors of the plaintiff. Now, it is submitted that the declarations, touching the illegitimacy of the lessors of the plaintiff which appear on the face of the will are clearly admissible. To this extent there is error in the rulings of the Court. And it remains only to show, that between the declarations made on the face of the will, and other declarations made at the same time, and not reduced to writing, there is no difference.

The statements and explanations made by the testator on the subject of the will, were in truth parcel of his instructions, and were properly in evidence, to enable the jury to determine whether in fact, the will was prepared agreeably to instructions. The impropriety of the ruling may be exposed, by supposing that the defendant had proved nothing more than that the will was prepared conformably to instructions, would not the plaintiff have been at liberty on cross-examination, to bring out every thing which transpired on that occasion? But if the privilege is the privilege of the testator, the plaintiff could not bring out on cross-examination, any thing which the witness was not at liberty to disclose on his examination-in-chief.

Independent of the tendency of the ruling of the Court to mislead the jury, and of its effect in excluding evidence, material in determining the degree of credit to be attributed to the testimony of the witness, so far as it was admitted, it will be insisted that the case is not within the rule which prohibits counsel from disclosing the secret of his client.

The rule was established for the protection of the rights and interests of the client, whenever they may come in question between him, and others claiming adversely to him. But the reason of the rule does not apply to the case of a controversy between parties, deriving their respective titles under the client. Indeed it would seem to be in furtherance of the views and wishes of the client, that as between a devisee claiming under his will, and his heir at law claiming adversely—and as between parties whose rights are liable to be affected by his acts, all his declarations constituting part of the *res gestæ*, ought to be admitted in evidence for the purpose of determining how far those acts should be permitted to affect the interests of the litigants.

7 Law & Eq. 89, Russell *vs.* Jackson.

In a controversy between the heir at law and devisees, the declarations made by testator to his counsel at the time of preparing his will, to the effect that the devise was on secret trust, were admitted. And this decision is the more forcible as in the same case, admissions to the like effect made by the devisees to the same counsel, were excluded as within the rule.

1 Ves. Jr. 342, Nourse *vs.* Prime.

Declarations by testator to his counsel at the time of making the will and shortly thereafter, were admitted as between the next of kin, and the executrix claiming a residue undisposed of by the will.

1 P. Ws. 116, Gainesboro' *vs.* Gainesboro'.
Cases Temp. Talbot, 240, Brown *vs.* Selwyn.
2 Atk. 370, Ulrich *vs.* Litchfield.
3 Ves. 408, Walpole *vs.* Oxford.

11 East. 441, Doe *vs.* Brown, are cases in which the attorney was permitted to give in evidence the consultations between himself and his client, touching the subject matter of the will, without objection arising out of the relation between him and testator.

The declarations offered were not offered for the purpose of influencing the construction or operation of the will as a disposition of the testator's estate, nor to affect any right which was supposed to exist in him at the date of the will, nor any duty to which it was supposed he might be liable. They were offered as *hearsay* in relation to the *status* of parties, who now claim the estate of a third person, in which the testator had no interest, as against other parties claiming the said estate; and the very hypothesis on which hearsay in matters of pedigree is admitted, is, that the declarant had no interest in the subject which would mislead him.

Assuming then, that so much of the declaration touching the illegitimacy of the lessors of the plaintiff, as is written in the will may be read as hearsay, it would result, as of course, that either party may call for the residue of the declaration; since the declaration not written may, very materially, increase or impair the credit which would otherwise be given to the written declaration.

Seventh exception on page 82 of printed Record.

The defendant in further support of the issue on his part, offered to prove that before the commencement of the illicit intercourse between the said Thomas B. Craufurd, and Elizabeth Taylor, she had become debauched by some other person, and had given birth to a bastard child; and that such facts were known to the said Thomas B. Craufurd, before the commencement of his intercourse with her. This evidence was offered, to meet the opening statement to the jury by the counsel for the plaintiff, declaring what the plaintiff expected to prove, to the effect that she was a pure woman at the time of the commencement of her aforesaid intercourse with the said Thomas B. Craufurd; and as circumstances tending to sustain the defence that the said Craufurd was never married to the said Elizabeth Taylor. But, on the objection of the plaintiff, the Court refused to permit said evidence to go to the jury.

It will be insisted that the evidence tendered, was admissible for all the purposes for which it was tendered.

The plaintiff making the purity of Elizabeth Taylor a part of his case, the defendant was at liberty to show that she was unchaste previous to her intercourse with Craufurd.

The character of the wife is not in evidence in a case where the plaintiff relies altogether on proof of an actual marriage. But where the marriage is to be made out from many circumstances, the character of the woman for chastity, at the commencement of an intercourse, admitted to have been in its inception illicit, may have a very material and even controlling influence over the question, whether years after the commencement of that intercourse, the man did contract marriage with his paramour. It is presumed that a woman hitherto of irreproachable character, who is debauched under promise of marriage, and who has proved by her subsequent conduct, that she is worthy the confidence of her seducer, must stand in reference to marriage, in a condition very different from that of a harlot by the way-side, who has managed to keep up her intercourse with a man, on the basis of animal passion on one side, and monies numbered on the other side.

The eighth exception is taken to the instructions of the Court, given to the jury, in response to the prayers submitted by Counsel for the parties on the entire case. The exception commences on page 82. The plaintiff's prayers on page 92. The defendant's prayers and Court's instructions to the Jury on page 93 of printed record.

"PLAINTIFF'S PRAYERS."

"1st. If the jury find, from the evidence of the witness Elizabeth Craufurd, that she was married at St. Patrick's church, in the city of Washington, by the Reverend Timoleon Fiziac, then the assistant minister of said church, on the first day of September, in the year 1835, to Thomas B. Craufurd; and shall further find, from the evidence, that two of the lessors of the plaintiff were children of Thomas B. Craufurd and witness, born prior to the said marriage, and subseqently to said marriage were recognized and treated by said Thomas B. Craufurd as his children; that the other two lessors of the plaintiff were children of Thomas B. Craufurd and Elizabeth Craufurd. were born subsequently to said marriage, then their verdict must be for the plaintiff, provided they shall further find, from the evidence, that the said David Craufurd died intestate, without ever having been married, and not leaving any relations, (other than the lessors of the plaintiff,) or as near a degree as that of nephews and nieces.

"2d. That the declarations of Thomas B. Craufurd, made subsequently to the said alleged marriage, that he had been married to the said Elizabeth Taylor; that the entry of the baptism of George T. Craufurd in the baptismal register of St. Patrick's church, as read in evidence to the jury—that the testimony of the Rev'd Mr. Donelan, as contained in such of the answers and parts of answers to interrogatories propounded under the said commission, as were read in evidence to the jury, are, if believed by the jury, facts corroborative of the testimony of said Elizabeth in relation to her statement concerning such marriage, as given in evidence to the jury.

"3d. That a marriage, celebrated as deposed to by the said Elizabeth Craufurd, if the jury shall prove that it was so celebrated, would not be invalidated because no marriage licence had been obtained.

"4th. That marriage is, by the law of Maryland, a civil contract, and as such required only the consent of the parties; and such contract of marriage may be inferred from the evidence in this cause, without showing that it was celebrated by a clergyman, or in the face of a church

"5th. If the jury find, from the evidence aforesaid, that the said Thomas B. Craufurd and the witness Elizabeth Craufurd cohabited as man and wife, and that the said Thomas B. Craufurd acknowledged that she was his wife, and that the plaintiff, G. T. Craufurd, and the female plaintiffs in this cause, were his children by said Elizabeth, and as such entitled to be called by the name of Craufurd, and that they were always called by such name of Craufurd, then the presumption of law was in favor of the legitimacy of the said plaintiff; and the burden of proof is on the defendant to overcome such presumption by evidence satisfactory to the jury.

"The defendant, conceding the 1st and 3d of said prayers, prayed the court to instruct the jury as follows:

"DEFENDANT'S PRAYERS."

"1. That it will be competent for the jury, on all the evidence, to find that the cohabitation between Thomas B. Craufurd and Elizabeth Taylor, during the entire period of such cohabitation was illicit, and no marriage was ever solemnized between them; and if the jury shall so find, their verdict ought to be for the defendant.

"2. That it is competent for the jury, on all the evidence, to find that no marriage was ever celebrated between the said Thomas B. Craufurd and Elizabeth Taylor; and unless the jury shall find that a marriage was in fact celebrated between said parties, their verdict ought to be for the defendant.

"But the court granted the first and third prayers of the plaintiff, the same being conceded by the defendant, and rejected the remaining prayers offered by the plaintiff, and the prayers offered by the defendant, and instructed the jury as follows:

COURT'S INSTRUCTIONS.

"1st. If the jury find, from the evidence in this case, that Thomas B. Craufurd and Elizabeth Taylor were married at any time, and that two of the lessors of the plaintiff were born subsequent to said marriage, and that other two were born before said marriage, and that those two so born before marriage were subsequent to its date acknowledged and recognized by said Thomas B. Craufurd as his children; and shall further find that David Craufurd died unmarried and intestate, and without leaving any relative, other than the lessors of the plaintiff, of as near a degree as that of nephews and nieces, then their verdict must be for the plaintiff.

"2. The jury may find the marriage from the testimony of Mrs. Craufurd, if they believe her, or find the acts and declarations of Thomas B. Craufurd, taken in connection with all the other evidence in this case; and that such marriage, to be valid in this State, required only the consent of the parties, and would be valid, although the jury may find that it was not solemnized before any minister of the gospel.

"And if the jury shall find that at any time Thomas B. Craufurd and Elizabeth Taylor lived together as man and wife, that he acknowledged and treated her as such, that she was his wife, and the children which she bore during that time as his children, and permitted them to be called by his name; then the presumption of law is in favor of the legitimacy of said children. But if the jury shall find, from all the evidences in the case, that no marriage ever took place between Thomas B. Craufurd and Elizabeth Craufurd, then their verdict will be for the defendant.

"To which ruling of the court the defendant excepted."

It is submitted that the Court's instructions are erroneous, in the following particulars:

1. The Court has affirmed that if Thomas B. Craufurd and Elizabeth Taylor *at any time* lived together as man and wife—and if he acknowledged and treated her as his wife, and the children which she bore during that time as his children, and permitted them to be called by his name, then the ***presumption in law*** is in favor of the legitimacy of said children, and consequently of the fact of the marriage of their parents. It will be observed that the presumption is not to be founded on the character of the habitual intercourse between the parties, during their entire cohabitation. The law, as supposed by the Court, is, that if the parties at any one moment of time, on any one isolated occasion, in the presence of any one witness, acted towards each other as husband and wife might

have acted; and if on that occasion, and to that witness, Craufurd acknowledged and treated Miss Taylor as his wife, and her children, as his children, and on that occasion permitted the children to be called by his name, a presumption is raised in favor of the legitimacy of the children, and of the marriage of the parents, which the law will not suffer to be rebutted, by evidence of the conduct of the parties towards each other, during the entire season of their connexion before that special epoch, and of their conduct towards each other during all time prior or subsequent to that epoch.

The objections to this part of the instructions are:

1. It assumes that the presumption in favor of marriage from cohabitation, is *presumptio juris et de jure*, and therefore is not to be rebutted by any amount of proof to the contrary.

2. The presumption is to be conclusively established, by an isolated act or declaration of the man, although such act or declaration may be contradicted, by the otherwise uniform current of acts and declarations of both parties to the contrary.

The true rule on the subject is, that cohabitation of the parties as husband and wife is evidence from which the jury may presume a marriage. The presumption is one of *fact*, and is not to be founded on isolated facts or declarations; but is to be deduced from all the circumstances, attending the cohabitation of the parties, from the commencement to the termination thereof.

In support of a rule so well settled, reference to authorities will be unnecessary.

As the counsel for the defendant in error may refer to Cheseldine's lessee *vs.* Brewer, 1 Har. & McH. 152, to sustain the view that the presumption in favor of marriage is one of *law*, it may not be amiss to suggest that the case was tried at the County Assizes as far back as 1739, and was not reported until the year 1809—that the judgment appears to have been affirmed by the Provincial Court, but we are not informed whether the affirmance was after argument and consideration by the Court—or by consent of the parties—or by default of the plaintiff in error. There can be no doubt, that the evidence of cohabitation was sufficient to warrant the presumption of marriage as a fact, and the plaintiff could have gained nothing more than a barren victory by a reversal of that judgment.

For the purpose of showing that the law of Maryland is in this respect, consistent with the law which prevails elsewhere, it will be sufficient to refer to

8 Gill & Johns. 50, Sellman *vs.* Bowen,

Where it was held that general reputation, cohabitation as husband and wife, and acknowledgment are *evidence* of marriage.

7 Gill, 247, 263, Copes *vs.* Pearce.

"Cohabitation alone, proved between parties as man and wife, is sufficient to raise the presumption of legal marriage, *when the parties have been long dead.*" "If there are any declarations of the parties besides, as to their being or not being married, these are afterwards to be used, to strengthen or weaken the presumption arising from their cohabitation."

17 Md. 49, Craufurd *vs.* Blackburne, (the case between the present parties, which is referred to in the fourth exception.) It was here assumed that cohabitation and acknowledgment were *evidence* of marriage, but that the presumption arising from those facts might be rebutted by proof of adverse declarations, made by the husband at any time during such cohabitation. And it was more especially held that "the last will and testament of Thomas B. Craufurd was properly admitted in evidence as a declaration (adverse to the legitimacy of the lessor Craufurd) made by him in a most deliberate and solemn form."

2. The Court affirms that the Jury may find the marriage from the testimony of Mrs. Craufurd if they believe her—or from the acts and declarations of Thomas B. Craufurd taken in connection with all the other evidence in the case.

And that such marriage, to be valid in Maryland, required *only the consent of the parties*, and would be valid although the jury may find that it was not solemnized before any minister of the gospel.

The FIRST observation to be made on this part of the instruction is that the Court assumes that the woman who was produced by the plaintiff, and examined by him as *Elizabeth Taylor* (vide especially *page* 28 of the printed Record) is *Mrs. Craufurd*—thereby intimating broadly to the jury, the belief of the Court that she was entitled to that appellation, and consequently that the supposed marriage was made out by the evidence, to the satisfaction of the Court.

This incident if it stood alone might be deemed unworthy of remark. But it is only one of many *indicia* of the strong prejudices against the defendant's case in which the Court (unconsciously no doubt) indulged throughout the trial, and which must have had controlling influence over the minds of the jury. In truth the defendant had not the benefit of that fair and impartial verdict of the jury upon the matter of fact, in issue, to which he was clearly entitled.

The rule *ad questionem factio non respendent judices*, as understood in Maryland imposes on the Court the duty of avoiding the expression of any opinion whatever upon the weight of evidence in regard to any matter of fact in issue.

6 G. & J. 63, Crawford *vs* Berry.
10 G. & J. 346, Planters Bank *vs*. Bank of Aleaxndria.
Ib. 58, Sutton *vs*. Crain.
3 Gill 31, Bullocks *vs*. Musgrave.
6 Gill 94, Franklin Insurance Co. *vs*. Hamill.
3 Md. 146, Gaither *vs*. Martin.
4 Md. 242, B. & S. R. R. Co. *vs*. Woodruff.
10 Md. 118, Boyd *vs*. McCann.

In some of those cases, possibly, the Court of Appeals in their jealousy of innovation may have enforced the rule where it might have been disregarded, without prejudice to the justice of the case. But the conclusion, from all the cases in Maryland and elsewhere, is that the suitor is entitled to expect that in regard to those matters of fact, *which are really in issue*, the Court shall carefully abstain from the use of language which may possibly influence the verdict of the Jury. And we shall find from Grahame on new trials that the English courts habitually set aside verdicts and grant new trials, on the ground that the question of fact, or the law applicable to the fact, has not been fairly given to the Jury.

The *second* observation on the instruction, is that in assuming that in Maryland consent of the parties is marriage, it is assumed to be immaterial whether such consent precedes or follows sexual intercourse. And in order to make the construction at all relevant to the case, it must be further assumed, that such consent may be given in the progress of an intercourse, confessedly meretricious in its origin, and may be proved after the death of the man, by his surviving paramour, for the purpose of establishing the right of her children, as legitimate branches of the family of the putative father.

It is submitted that a rule so relaxed finds no warrant even in the Law of Continental Europe; in every part of which it is believed some ceremony is prescribed to authenticate the solemnization of marriage. It is certain that no English case can be vouched in its support. And it is wholly inconsistent with the Law of Maryland, as it is to be deduced from.

5 Har. & Johns. 27, Mercer *vs.* Walmsley, where the promise and *copula* were clearly proved—the latter as the consequence and consummation of the former. But it did not occur to the very eminent counsel who argued the case of the part of the appellee, nor to any one of the learned Judges of the Court of Appeals, that consent only, or consent accompanied with sexual intercourse, would constitute marriage.

The *third* observation to be submitted on this branch of the instruction—to wit: that consent simply is marriage, is that it is *a pure abstraction*, uncalled for by the evidence in the cause, and could have no other effect, than to mislead the jury from the question really at issue between the parties.

The intercourse between Thomas B. Craufurd and Elizabeth Taylor, commenced in the year 1828. It was illicit in its origin, and retained its illicit character confessedly down to and including the month of August, 1835.

At that time, Elizabeth Taylor asserts, that a marriage was solemnized *in facie eeclesiœ* between herself and Craufurd.

It is not pretended even by her, that any other promise, contract or agreement, or consent to marry was ever made or entered into. Nor is there any evidence whatever from which any such subsequent consent, *as a fact,* can be inferred, which would not be equally available, in corroboration of the actual marriage pretended by her.

The Court's instruction is actually this: the circumstantial evidence of cohabitation, acknowledgment and reputation, combined with the positive testimony of Miss Taylor, may not convince the jury that a marriage was actually celebrated between the parties, as alleged by her. At the same time the jury may utterly discredit her as a witness, and from those circumstances of cohabitation, acknowledgment and reputation find a subsequent irregular marriage *by consent*, which it is not pretended was ever given. And this leads to the *fourth* observation on the instructions.

Elizabeth Taylor asserts, that the marriage in fact was celebrated upon the express condition that it should be kept secret during the life-time of Dr. David Craufurd.

She proves further, that she faithfully observed this condition; and therefore in public never acknowledged Craufurd as her husband, and never cohabited with him as a wife does with her husband.

In the year 1843, it is alleged that Craufurd, for the first time confessed his marriage to one witness, and subsequently made like confessions to others.

But those confessions are opposed by contrary declarations, and especially by his most deliberate and solemn denial in his last will.

From their first acquaintance down to June, 1844, Elizabeth Taylor lived in an out-house on the estate of Thomas B. Craufurd. In that year she removed to his dwelling, and after this removal, according to the testimony of some of the witnesses, Craufurd cohabited with her as his wife. It is proved by other witnesses that his intercourse with her was of a different character.

It was in July, 1844, that the will was made; proving clearly that the removal of Miss Taylor and her children to Craufurd's house was not a consequence, or in view to a marriage; and discrediting most conclusively, the pretended confessions made by him of a marriage anterior to that date.

There is no proof whatever of reputation in the family of Craufurd in favor of the marriage.

Now whilst it is conceded that all this evidence might in one aspect, be treated as confirmatory of the pretended marriage in fact in 1835, it is submitted that the fact of such marriage being negatived, the remaining evidence furnishes no presumption whatever of consent to marriage, given at another time and in different manner.

Cohabitation and acknowledgment, to serve as the bases for the presumption of a marriage, must be continuous and consistent. They must be such as evidence the existing relations of husband and wife, because they are consistent with the theory of that relation, and of none other. And therefore, where it is confessed that the pretended marriage was secret, and was to be kept secret; and that the intercourse between the parties was to retain a character which should mislead the public, and especially the family of the man, into the belief that the cohabitation continued to be meretricious; and where it is also confessed, that the woman did not at any time, by speech or action, betray their secret, it is not possible from an intercourse thus continued, and thus carried on, to presume marriage, merely because of an occasional passage of deference, or affection or inconsiderate language, which doubtless occasionally occurs between parties whose loves are confessedly unlawful.

The great question at issue which gives to the cause its chiefest interest, is whether the intervention of a minister of religion, or the use of any religious or other ceremony, is essential to the validity of a marriage in the State of Maryland.

The general subject has been under the consideration of the Supreme Court on several occasions.

In Jewell *vs.* Jewell, 1 How. 219, the judges were equally divided on the questions whether if the parties, before sexual intercourse, in the presence of the woman's family and friends, agreed to marry, and did afterwards live together as man and wife, this agreement *cum copula*, did by the law of Georgia or South Carolina, form a marriage indissoluble by mutual consent? and whether if the contract is made *pro verba de præsenti*, and remains without cohabitation, or if made *per verba de futuro*, and is followed by consummation, it amounts by the same law to a marriage, valid and binding equally as if made *in facie ecclesiæ*.

In 6 How. 550, 587, Patterson *vs.* Gaines, where it was alleged the ceremony had been performed by a Priest, it was assumed upon the authority of a decision made in Pennsylvania, that marriage is a civil contract in Pennsylvania, to be completed by any words in the present tense, without regard to form.

And in 10 How. 174, Hallett *vs.* Collins, it was adjudged that in order to constitute marriage in the Spanish colonies, nothing more was necessary than consent, joined with the will to marry.

It would seem, therefore, that the rule in regard to marriage, in any State, is to be collected primarily from the Laws and usages thereof—and that in the absence of any such special law or usage the common law will furnish the rule.

We cannot determine with equal confidence, whether in Jewell *vs.* Jewell, the diversity amongst the Judges was in regard to the rule of the common law, or to the sufficiency of the evidence of a departure from that rule by Georgia or South Carolina. And we may be permitted to assume that the entire subject comes before this Court, unprejudiced by all former decisions.

Our question therefore, divides itself into two branches.

1. What was the rule of the common law in regard to the form of celebration of marriage.

2. What alteration, if any, has been effected in that law by the legislation of Maryland.

The leading authority on the first branch is 10 Cl. & Fin. 534, the Queen *vs.* Millis, which is recognized in 13 M. & W. 261, Catherwood *vs.* Caslon, as conclusively determining that at common law, the presence of a minister of religion was indispensable to the validity of marriage.

In the first of those cases, a judgment of the Queen's Bench of Ireland was affirmed by an equal division of the Law Lords. The authority of the ultimate judgment as *res judicata* is lessened somewhat by this circumstance. On the other hand, it is confirmed and strengthened, by the masterly opinion delivered at the same time by Lord Chief Justice Tindal, in behalf of all the Judges of England. And it may not be irrelevant to suggest, that the opinions of Lords Brougham and Campbell, (two of the dissenting Lords,) might possibly have been influenced by early associations and prejudices.

The importance of the question, and possibly the anticipated diversity of sentiment amongst them, induced the Law Lords, with the exception of Lord Abinger, to reduce their opinions to writing; and therefore we have in the printed report of the case, commentaries of surpassing power and learning, which exhaust the subject.

Invoking, in behalf of their client, the opinions of the Lord Chancellor, (Lyndhurst,) from p. 831 to 873, of Lord Cottenham, p. 873 to 907, and of Lord Chief Justice Tindal, p 653 to 689, the counsel for the plaintiff in error will present a brief summary of the chief topics involved in the controversy.

The Chief Justice affirms that by "the law of England, as it existed at the time of the passing of the marriage act, a contract of marriage *per verba de præsenti* was a contract indissoluble between the parties themselves, affording to either of the contracting parties by application to the ecclesiastical court, the power of compelling the solemnization of an actual marriage; but that such contract never constituted a full and complete marriage in itself, unless made in the presence, and with the intervention of a minister in holy orders."

And again, "there will be found no authority to contravene the general position that at all times, by the common law of England, it was essential to the constitution of a full and complete marriage, that there must be some religious ceremony." P. 655.

Propositions thus broadly and confidently stated by the greatest common lawyer of his day, command our highest respect; but their authority is, if possible, enhanced by his searching review of the leading cases on the subject.

Lord Cottenham lays it down "as obvious, that the consequences of a valid marriage must be

1. "To give to the woman the right of a wife in respect to dower.
2. "To give to the man the right of a husband in the property of the woman.
3. "To give to the issue the right of legitimacy.
4. "To impose upon the woman the incapacity of coverture.
5. "To make the marriage of either of the parties, living the other, with a third person void." P. 878.

And he then proceeds to show, from the cases adjudged before the English marriage Act, that not one of those incidents attached to a marriage contracted without the intervention of a person in holy orders.

Similar conclusions are drawn from the cases by the Lord Chancellor, p. 848.

The more recent cases are shown to rest chiefly on the authority of Lord Holt and Lord Stowell—overlooking, however, the distinction, admitted by those learned Judges, to have existed between the canon law and the common law, in regard to imperfect marriages When thoroughly sifted, those cases are resolved into *obiter dicta*, or turn on issues collateral to the real question.

It is made likewise to appear, that the current of modern authority in favor of the looser doctrine, is by no means unbroken. Thus Lord Tenterden, as represented in Beere *vs.* Ward, is not altogether consistent with himself, as reported in King *vs.* Bathwick, 2 B. & Ad. 639; and is opposed by Lord Eldon on the motion for a new trial of the issues in the first case, p. 611.

Lord Mansfield was claimed, at one time, as the advocate for the looser doctrine. But in the sequel, it was conceded that the case from which the inference was drawn, is inaccurately reported. Hence we are at liberty to assume, on the authority of the speech delivered by him on the occasion of the passage of the marriage act, that in his opinion, at common law, the presence of a minister in orders was essential to marriage. The value of this opinion as evidence, will not be diminished by the gross imputation which Lord Denman has thought fit to cast on the motives of his illustrious predecessor.

We are not aware of the authority on which it is asserted that Lord Hardwicke thought the intervention of the minister was not required at common law.

And Sir Wm. Blackstone, who treats the marriage act as an innovation, and asserts that marriages entered into according to the rule of the canon law, "are valid for many purposes," necessarily concedes that they are not valid for *all* purposes. It is to be regretted that he has not distinguished the purposes for which such marriage was valid, from the purposes for which it was not valid.

We have asserted that the doubts which exist in modern times on the subject, is attributable in a great degree, to the opinion expressed by Sir W. Scott in 1811, in Dalrymple *vs.* Dalrymple, 2 Hagg, 57.

The Chief Justice proves, what is indeed apparent, that the case involved nothing more than the validity of a Scotch marriage; and consequently, that the observations made by the learned Judge in reference to the English law of marriage, though entitled to the highest consideration, were in strictness *obiter dicta*, p. 680.

In the progress of his justly celebrated judgment, Sir W. Scott asserted that the Scotch law of marriage was in unison with the general canon law on that subject; that the canon law was the source of the English ecclesiastical law; and that as a contract *per verba de præsenti* without more, constituted marriage by the canon law as it existed anterior to the Council of Trent, the same rule must have been recognized by the ecclesiastical law and common law of England.

But the Chief Justice proves that long before the Pope's supremacy was extended over England, she had, through the agency of her own provincial councils, framed a body of canon law for her government; and although that code was enlarged and enriched from time to time, by importations from the continent, the general canon law, as such, never was recognized as a controlling authority, pp. 680, 681.

Lord Cottenham confirms this view in p. 875. But it may be more satisfactory to quote to the same effect, a passage from the judgment of Lord Denman, (one of the dissenting Lords,) in the Queen *vs.* the Archbishop of Canterbury, 11 Ad. & El. N. S. 649. "I think it necessary to reassert what has so often been declared by our illustrious predecessors in this court, and by the greatest writers on the English constitution, that the canon law forms no part of the law of England, *unless it has been brought into use and acted upon in this country.* Hence, rather differing from what I have heard this day, I am of opinion that *the burden of proof rests on those who affirm the adoption of any portion of it in England.* I thought of stating that merely by way of protest, because some things were said at the Bar which seemed to question so important a position."

Opposing those authorities, the one against the other, and thus shifting the burden of proof, it will not be necessary to examine the rule of the canon law, in reference to marriage, since it has not been shown, and cannot be shown, that the canon law in this particular, has ever been "brought into use and acted upon" in England.

The necessity for the intervention of a minister of religion in the marriage ceremony in England, is not attributable to the Decrees of the Council of Trent. The Decree of that Council on the subject of marriage, was passed in 1563, that is in the fifth year of the reign of Elizabeth—before which time every bond of union or sympathy between Rome and England had been sundered. Six centuries before the Council of Trent was assembled, we find amongst the institutions of Edmund, one which directs that at the nuptials there shall be a mass priest, who shall with God's blessing, bind the union to all prosperity. And at the Council held at Winchester 1076, it was declared that a marriage without the benediction of the priest, should not be a legitimate marriage—pp. 682, 877.

We are therefore to trace up to those laws, for the usage or custom pervading England, which requires the presence of a man of God to celebrate the rite of marriage: a custom or usage which, if we may accept their historical traditions as evidence, is as deeply rooted in the affections of the laity of that land, as any maxim or principle of their political or civil jurisprudence.

As part of this traditional evidence, we refer to the ordinance passed by the first of Cromwell's parliaments in August 1653, which required all marriages to be celebrated after a prescribed form before some justice of the peace, and expressly provided that no other marriage whatever, shall be held or accounted a marriage according to the law of England, Parliamentary History xx. 214. And to the Stat. 12, Ch. 2, ch. 33, which enacts, that all marriages since May 1, 1642, solemnized before a justice of the peace or reputed justice, and all marriages since the said time had or solemnized according to the direction of any ordinance, or reputed act or ordinance of one or both houses of Parliament, shall be adjudged and esteemed to be of the same force and effect, as if they had been solemnized according to the rites and ceremonies of the Church of England.

The spiritual courts of England recognize a contract of marriage entered into *per verba de præsenti*, as binding in conscience and indissoluble by act of the parties. A contract made *per verba de futuro* is not obligatory on the parties, unless followed by cohabitation. In this event it stands on a footing with a contract made *per verba de præsenti*. But that a contract in either form is not treated by the Ecclesiastical law as a *perfect* marriage—that is, as challenging all the incidents or consequences of a perfect marriage, must be apparent from the exercise of jurisdiction by the spiritual courts to enforce the execution of such contract by a formal marriage, and by the very form of the judgment pronounced in such case; which is *quod prædicta A. subiret in matrimonium cum præfato B:* which assumes that up to the time of the judgment, marriage between the parties had not been perfected, p. 665.

The argument supplied by this exercise of jurisdiction, may be enforced by an illustration furnished by the opinion of one of the dissenting Lords. Equity treats the purchaser of land as owner from the date of the contract, and enforces a conveyance in specific performance thereof. But this ownership is not recognized at law for any purpose: nor is it a perfect title even in the view of a Court of Equity. It is upon the very hypothesis that the right, though founded in natural law and binding in conscience, doth not operate as a perfect transfer of the title that the jurisdiction is exercised.

That the jurisdiction to enforce a regular marriage does not prove that the contract sought to be enforced is *very marriage*, may be further illustrated thus: A, before the Stat. 32, Hen. 8, contracts marriage with B, *per verba de præsenti*. He then marries C, and by her has issue and dies. Now this issue will be heir to his real estate, and C. will be entitled to dower. Hence, this formal marriage was not void, as it must have been, if the contract between A and B was *verum matrimonium*. It was voidable only at the election of B, and that right of election could be exercised only in the life time of A. P. 677, 853, 888.

The dissenting Lords suggest that marriage *in facie ecclesiæ* was enforced for the sake of order—but more especially with the view to extend the influence and increase the revenues of the clergy. Upon this theory the argument in support of our inference is rather strengthened. The practical wisdom of the clergy of all ages has been universally acknowledged and admired. They could not have failed to perceive that the objects now imputed to them, would be most effectually promoted by inculcating the view that marriage was a sacrament, and as such could be celebrated by none other than a minister of religion. Their jurisdiction would be thus rested on a sure foundation. On the other hand we may presume that the lay courts of England would have been prompt to restrain a jurisdiction, the exercise of which (if the theory now proposed is accepted) could not have added strength to the marital bond, or clothed it with other incidents, or even have contributed *ad emendationem morum*.

The case of Haydon *vs.* Gould, 1 Salk. 119, is relied on as a direct adjudication that a contract *per verba de præsenti*, even if followed by cohabitation, is not accepted as very marriage by the spiritual court—pp. 666, 855, 881.

Administration had been granted to the person claiming as husband, on the estate of his supposed wife deceased. It was afterwards shown, that although the form of the marriage ceremony had been observed, the person who officiated was a layman. The letters were therefore revoked; and this last judgment was affirmed by the delegates. So much for the judgment, which is clear, and from which the inference is conclusive.

In assigning the reasons for the judgment, it is said that the appellant, "by demanding a right due to him as husband by the ecclesiastical law, must prove himself husband according to that law, to entitle himself in this case." The conclusion remains, that the eclesiastical law did not recognize the alleged marriage as *ipsum matrimonium*.

It is supposed by the dissenting Lords, that prior to the statute of distributions, the spiritual court granted or refused administration at pleasure; and that at the time of the decision of this case (9 Anne) the strict rule which now prevails, of granting letters to the person entitled to distribution, had not been established. The conjecture is hardly available against the distinct statement, that the court did not recognize the applicant as husband.

The next great authority relied on in support of the proposition that consent only is essential to marriage, is Lord Holt, as reported in Jefson *vs.* Collins, 2 Salk. 437, 6 Mod. 155, Holt, 458. Wigmore's case, 2 Salk. 438, Holt, 459. In the first of those cases a prohibition was asked, to stay a suit in the spiritual court for nullity of marriage, on the ground of prae-contract. It was alleged that the contract was made *per verba de futuro*. The prohibition was refused, on the clear ground that the spiritual court had jurisdiction in all causes matrimonial, and no sufficient reason was suggested for interference. In the other case a prohibition was asked for to stay a suit for alimony. We are not informed whether the writ was granted or refused.

There is nothing then, of adjudication in those cases, to affect the question at issue. And they are material only, because of some observations made by Lord Holt, on the general subject of marriage. Those observations are therefore at the best *obiter dicta.* And although the *obiter dicta* of Lord Holt are not to be lightly disregarded, they can hardly be treated as conclusive on a question of ecclesiastical law; especially where they are opposed by the reasons assigned by the delegates for their judgment in a subsequent cause—pp. 668, 837, 893.

But there is no necessity for quarrelling with any thing which fell from Lord Holt on those occasions. We may affirm with him, "that a contract *per verba de præsenti* is marriage," and "as much a marriage in the sight of God as if it had been *in facie ecclesiæ.*" It does not necessarily result, that marriage thus contracted, is attended with all the incidents, which the law attaches to a more formal marriage. A verbal contract made in consideration of marriage, is just as obligatory *in foro conscientiæ*, as the contract of marriage itself. But it cannot be enforced at law or in equity. In truth, we shall find that at common law, every transfer of real or personal property was to be authenticated by some open act or ceremony. And the presumption thence resulting is strong that the same laws required that parties who are entering in the holy state of matrimony—the mother of society, as it has been most aptly termed, shall attest their intent by some appropriate solemnity. It is quite a mistake to imagine, that the contract, and its consequences are matters personal to the parties, and in which society at large has no concern.

This argument from policy and probability, is most forcibly expressed by the great moralist of the last century. "To the contract of marriage, besides the man and wife, there is a third party—Society ; and if it be considered as a vow—God."

We may likewise agree with Lord Holt that a contract *per verba de præsenti* is marriage by the canon law. But the question then arises by what canon law? And if it is marriage by the canon law of England, is it likewise marriage by the common law? And again, is it by either law marriage for *all* purpose, or only for *some*, or as Blackstone expresses it for *many* purposes? These questions are not solved by the passages on which reliance will be placed by the defendant in error. But they receive a practical solution in the concluding paragraph of the opinion in Wigmore's case, as reported in Holt, 459.

"In the case of a dissenter married to a woman by a minister of the congregation who was not in orders, it is said, that this marriage was not a nullity because by the law of nature the contract is binding and sufficient; for though the positive law of man ordains that marriage shall be made by a priest, that law only makes this marriage irregular and not expressly void. But marriage ought to be solemnized according to the rules of the church of England to entitle the privileges attending legal marriage as dower, thirds, &c." Whatever therefore may have been Lord Holt's view of the canon law, as applicable to a marriage entered into *per verba de præsenti*, we have here his distinctly expressed opinion, that the common law required the presence of a minister of religion, to assist in the celebration of the rites of marriage, and refused to attach the common law incidents of marriage to any ceremony of marriage, in which he was not assistant.

The same view of the rule of the common law is expressed by Sir W. Scott in Dalrymple *vs.* Dalrymple. After adverting to the case of Bunting *vs.* Lepingwell, for the purpose of showing that the Spiritual Court would, before the Stat. 32 Hen. 8, ch. 38, have avoided a regular marriage at the suit of a party claiming under a prae-contract, he distinctly admits that "the common law certainly had scruples in applying the civil rights of dower and community of goods, and legitimacy in the case of those looser species of marriage."

The Lord Chancellor also affirms that this position is admitted in the fullest manner, by the same ecclesiastical authorities which affirm that a contract *per verba de præsenti* is marriage, p. 845, and he quotes, as authorities for his assertion Swinburne, Sir Edward Simpson, and Mr. Justice Doddridge, in addition to Lord Holt, Sir W. Scott and Blackstone.

The conclusion upon the whole therefore is, that whilst there is doubt whether the common law held a marriage entered into *per verba de præsenti* simply to be very marriage, the canonists and common lawyers, anterior to the marriage act, were united in opinion, that at common law the presence of the minister of religion was of the essence of marriage.

We propose next to refer to the legislation of the Colony and State of Maryland on the subject.

The first act "touching marriage," was passed 1640, ch. 7. This was succeeded by "an act for publication of marriages," 1658, ch. 7, and another 1662, ch. 5.

This last was repealed by act 1676, ch. 2; and immediately thereafter another act, ch. 6, was passed, whereby it is expressly required that the publication of Banns, or the issuing of a License shall precede the celebration of marriage; and it is enacted that upon such publication of Banns or License obtained, it shall be lawful for a minister, pastor, magistrate or county court, to join the parties in marriage; and it is further enacted, "that all such marriages as shall not be made or celebrated before some Priest, Minister, Pastor or Magistrate, with five sufficient witnesses at least, according to the form before mentioned, shall be, and are hereby *declared* to be null and void." And a form of celebration is given, which corresponds substantially with that which is found in the Ritual of the Church of England.

We have not been enabled to discover the texts of the acts which preceded that passed in 1676. But we may readily imagine that those acts like their successors, recognized the marriage rite as a religious ordinance; and that the civil authority was admitted as the celebrant, only because of the then sparsely settled state of the colony.

The celebrant in any case, was to be a person distinct from the parties, and witnesses were to be present to attest the fact. And we shall find in our Statute Books, various provisions commencing as early as the year 1640, for the registry of marriages, in the early ages, in the office of the county clerk, and more recently, after the establishment of the Church of England in the province, and the division thereof into parishes, in the Parochial Register. We may therefore safely conclude that at this early day, the convictions of the legal profession, and the prejudices, if you please, of the laity, were equally intolerant of the idea that marriage could be effected, by the breathing of a vow by one party into the ear of the other.

The act of 1676, is re-enacted by the act of 1692, ch. 14; and this last act is made perpetual by the act of 1699, ch. 46. It has not been expresssly repealed at any time prior to the adoption of the Code of 1860. It remained in force therefore, except in so far as it can be shown to be inconsistent with subsequent legislation, or invariable usage originating in such legislation.

The act of 1700, chap. 1. "For service of Almighty God," amongst other things, "to prevent any lay person from joining any persons in marriage, where a minister or priest can be had, and to ascertain what shall be paid for marriage," enacted "that in every Parish where any minister or incumbent shall reside, or have charge of souls therein, no Justice or Magistrate shall join any persons in marriage."

This is re-enacted by 1702, ch. 1, sec. 5. And by act 1704, ch. 72, it is further provided that where there are Banns or License, "it shall and may be lawful for either Minister, Pastor or Magistrate (where no minister can be had) to join in marriage." * * *

The act of 1717, ch. 15, provides first for the publication of Banns, and then proceeds, "and that it shall and may be lawful after such publication, and certificate thereof had, for any minister, duly qualified, to join together in matrimony any such persons so published, according to the Liturgy of the Church of England; saving to the minister of the respective parishes where such publication shall be made, their just dues for such marriages."

It then prescribes penalties on the man who marries without publication of Banns, or special License from the Governor, and on the minister joining parties in marriage contrary to the act, and on persons who go out of the province to get their marriage solemnized in a neighboring colony; and then ascertains the fees for publication of Banns, and for the solemnization of marriage; and lastly, by section 5, provides that the act shall not extend to any persons of persuasions in religion, different from that of the Church of England; but that all such persons, and the manner of their proceedings in marriage, may remain entirely unaltered by the act, and in the same circumstances as if the act had not been made.

Persons embraced by this Proviso might therefore have had their marriage solemnized before a magistrate.

The last act in the series is the act of 1777, ch. 12; which by the section 3, enacts "that the rites of marriage between any white persons, subjects or inhabitants of the State, shall not be celebrated by any person within this State, unless by ministers of the Church of England, ministers dissenting from that church, or Romish Priest appointed or ordained according to the rites and ceremonies of their respective churches, or in such manner as hath heretofore been used and practiced in this State by the Society of people called Quakers; and if any *person* shall celebrate the rites of marriage, between any white persons as aforesaid, contrary to the true intent and meaning hereof, he shall forfeit and pay for every offence the sum of £500."

No penalty, however, is imposed on the persons contracting marriage contrary to the above provision; and this is the more noticeable, as by a subsequent section, penalties are imposed on every person marrying, and on every minister celebrating the marriage rite, without license or publication of Banns, as directed by the act. The inference is irresistible. The act assumes that the law, as it then stood, required that the rites of marriage should be celebrated by some third person, other than the parties contracting marriage; and assuming the principle of that law and its sanctions, it proposed to do no more than define the persons, who should have authority to officiate on such occasions.

The act of 1777 effected a repeal therefore, of so much of the preceding laws as empowered a magistrate or county court to celebrate the rites of marriage, but did not repeal or profess to repeal, or operate as a repeal of those laws, which declared the nullity of a marriage; entered to before a person who was not authorized to celebrate the marriage rite. The conclusion is, therefore, that the Statute Law of Maryland, as it existed at the time of the adoption of the Code, expressly annulled any and every marriage, unless the rites thereof were celebrated by some one of the persons defined, or in manner prescribed by the act of 1777.

As a general proposition it may be affirmed, that a contract entered into or act done in contravention of a statute is void.

But this rule is subject to exceptions. And in How. 80, Harris *vs.* Runnells, the Supreme Court held that where a statute prohibits or enjoins things to be done with a prohibition and penalty, or a penalty only for doing a thing which it forbids, the statute must be examined as a whole, to find out whether or not the makers meant that a contract in contravention of it should be void, or that it was not to be so.

"But in prosecuting this examination, if the statute is silent, and contains nothing from which the contrary can be properly inferred, a contract in contravention of it is void."

The burthen is therefore cast on the party who alleges that the legislature did *not* intend, that the act done in contravention of the statute should be void.

This court has also said, that for the purpose of ascertaining the intent "it makes no difference whether the prohibition be expressed or implied. In either case a contract in violation of its provisions is void."

Those rules are so clearly and pointedly expressed, as to relieve us from the necessity of troubling the court with further references.

We insist that there is nothing in the letter of the act of 1777, from which it can be properly inferred, that a marriage celebrated in contravention of its provisions, should nevertheless be treated as a valid marriage.

We affirm in the next place, that in the letter of the act and in the policy indicated on its face, there is enough to show that the rites of marriage, celebrated by any other than a person authorized by sec. 3 of the act of 1777, or in a manner different from the directions of the same act, was designed and intended to have no valid effect.

In 2 M. & W. 149, Cope *vs.* Rowlands, (referred to by this court in the case already cited,) the question was whether a broker not duly licensed under the provisions of the Stat. 6 Ann, ch. 16, could recover brokerage. Park Baron said the question to be decided was, whether the statute "meant *merely* to secure a revenue to the city, and for that purpose to render the person acting as broker liable to a penalty, if he does not pay it? or whether *one* of its objects be the protection of the public, and the prevention of *improper* persons acting as brokers? On the former supposition the contract with a broker for his brokerage is not prohibited by the statute; on the latter it is: for it cannot be permitted to a person to recover a compensation for an act which the law interdicts him from doing."

The act imposes a tax or license fee for the benefit of the public treasury. But revenue was not the *only* or even the *leading* object of the act. The license was not required where the parties would have the banns of their marriage published.

One leading object of the act was to give publicity to the marriage.

It was fairly presumed that parties who would give notice to the congregation of their purpose to be married, would celebrate the marriage itself in public; and in regard to marriages by license, which is required to be issued by the clerk of the county in which the woman resides, the act requires the clerk to keep and send to the treasurer of the State annually, a list of licenses issued by him; and also requires every minister, in like manner to return a list of the marriages celebrated by him.

We have thus in the treasury, a list of all marriage licenses issued since the year 1777; and if the ministers have discharged their duty, we shall find there likewise, a list of all marriages celebrated by them. And this list ought to embrace marriages by banns as well as marriages by license.

Another, and possibly the leading object, was to ensure solemnity in the celebration of the marriage rites. It was assumed that in marriage, and in the celebration of marriage, as also in the evidence of marriage, the public retained a deep interest. Before that time the law required the presence of the religious or civil celebrant, and annulled every marriage in which either the religious or civil authority did not take part. The act of 1777, proposed to exclude the civil authority from all participation in the ceremony. But we cannot infer from the exclusion of all others, saving ministers of religion, from the celebration of marriage, that the legislature intended to defeat its entire policy, by conceding impliedly to the parties, the privilege of contracting marriage by any form of words, imposing present obligation, without the intervention of a minister of religion, or the secular authority.

But this consequence must result from the decision, that the third section of the act does not avoid a marriage, entered into *contrary to the true intent and meaning* of that section—that is a marriage, the rites whereof are not celebrated by some one or other of the persons, authorized to join the parties in wedlock by that section.

If parties may contract marriage by words merely, without the presence of a third person, they may do so without publishing their banns, without obtaining a license, and without assuming the duty of making a return of the marriage to any public officer or authority.

There is no penalty imposed on the parties who undertake to contract matrimony without the intervention of a minister. It is then submitted, that the case before us differs from a case of prohibition enforced by penalty, or prohibition implied from penalty merely. In such cases it may admit of question whether the unlawful act is not sufficiently punished by exacting the penalties? and whether the dread of penalty is not an adequate security against the commission of the offence? But where the sanction of the law consists in prohibition merely, the act prohibited must be held to be void, or the prohibition will be unavailing.

Those conclusions are sustained by the views expressed by Chancellor Bland in 1 Bland, 481, Fornshill *vs.* Murray, and by the Maryland cases already referred to, which show that declarations of the parties, may be used indifferently to prove or negative marriage attempted to be made out by cohabitation. If marriage may be contracted by words importing present obligation, it is difficult to conceive of the principle on which an acknowledgment of the fact of marriage, once distinctly made, is to be rebutted by other declarations of contrary import, made on other occasions.

Chancellor Kent states the rule in 2 Kent's Com. 75, 1st ed. as follows: "If the contract be made *per verba de præsenti*, and remains without cohabitation, or if made *per verba de futuro* and be followed by consummation, it amounts to a valid marriage," Treating the marriage contract as *jure gentium*, it would seem "that consent was all that was required by natural or public law."

But he asserts further that "no peculiar circumstances are requisite by the common law to the valid celebration of marriage." "There is no recognition of any ecclesiastical authority in forming the connection, and it is considered entirely in the light of a civil contract. This is the doctrine of the common law." Those positions are broadly stated, and are elsewhere repeated with equal distinctness. But when we refer to his authorities, we are led to the painful conclusion that he had not bestowed on the subject his accustomed laborious and accurate research. He refers to Jefson *vs.* Collins, as reported in 6 Mod. and 2 Salk. where we find Lord Holt's general views on the general subject; but he omits Wigmore's case in Holt's reports, where the same eminent Judge distinctly affirms that the common law refused to attach the usual incidents of marriage to a ceremony, at which a minister of religion was not present. In later editions his first position is thus qualified: "in the absence of all civil regulations to the contrary." The notes contain additional references; but ignore altogether many other cases of common law origin which were so elaborately discussed and sifted in the case of Queen *vs* Millis. Under those circumstances, his opinion on the subject of the common law rule, is hardly to be put in competition with the more carefully considered opinions of Lords Lyndhurst, Lord Cottenham and Lord Chief Justice Tindal, speaking for himself and all the Judges of England; and as now qualified cannot influence the rule in Maryland.

Nor are we without great American names, which may compete in authority even with that of Chancellor Kent. In 7 Mass. 48, Milford *vs.* Worcester, Chief Justice Parsons declares that "when our ancestors left England, and ever since *it is well known* that a lawful marriage there, must be celebrated before a clergyman in orders."

And it is no small confirmation of the accuracy of this assertion of the Chief Justice, that as early as 1646, the Legislature of Massachusetts, the exponent of English puritanism, and in 1676, if not in 1658, the Legislature of Maryland, the exponent of English Episcopacy, provided certain ceremonials to be observed in the solemnization of marriage, which were to be regarded as of the essence of marriage. They must have brought with them, the conviction that the orderly solemnization of marriage was a matter of public concern, and that whilst the condition of the colony required some change in the rule of the common law, it was not fit that the rule should be wholly abrogated, and each couple left to contract matrimony in such form as might be the most acceptable in their own eyes. Nothing short of the remembrance of the deeply rooted traditions of their father land, could have united colonies so diverse on other subjects, in the conviction that the proprieties and decencies of social life required the act of marriage to be authenticated by some appropriate ceremony. In the absence of more authentic information as to the actual state of early legislation in other colonies, that of Massachusetts, in this respect, may be accepted as the representative of her puritan sisters; and the legislation of Maryland will no doubt find resemblances in the early statutes of the colonies of Virginia, North and South Carolina and Georgia.

The Dutch colony of New York, the Swedish colonies of New Jersey, Delaware and Eastern Pennsylvania and the Quaker colony of Central Pennsylvania, must be expected to speak an uncertain language, in reference to the common law rule of marriage.

The authority of Chief Justice Parsons is relied on to sustain our construction of the Act of 1777.

The Massachusetts' act of 1786, ch. 3, regulates marriages by ascertaining the persons who shall be authorized to solemnize the marriage. But it contains no words declaring other marriages to be void. In this respect it resembles the act of 1777.

We quote from the opinion of the Chief Justice. "Where the laws of any State have prescribed no regulations for the celebration of marriages, a mutual engagement to intermarry, by persons competent to make such contract would, in a moral view, be a good marriage, and would impugn no law of the State. But where civil government has established regulations for the due celebration of marriages, it is the duty, as well as the interest, of all the citizens to conform to such regulations. When therefore a statute enacts that no person but a justice or a minister shall solemnize a marriage, and that only in certain cases, the parties are themselves prohibited from solemnizing their own marriages by any form of engagement, or in the presence of any witnesses whatever. If this be not a reasonable inference fruitless are all the precautions of the legislature."

2 N. H. 268, Londonderry *vs.* Chester.

A penalty is imposed on any person not authorized by the act who shall join in marriage persons purposing marriage, but the act contains no words expressly annulling the marriage. It was nevertheless adjudged that no one who was not authorized by the letter of the act could celebrated a valid marriage.

The inference which is drawn by the Chancellor from 2 Halst. 138, Wyckoff *vs.* Boggs, is hardly warranted by the report; and is altogether at variance with those which are afforded by the opinions expressed by the Chief Justice and Drake Justice, in 6 Halst. 12, Pearson *vs.* Harvey.

3 A. K. Marsh, 368, Dumaresly *vs.* Fishly.

It is difficult to ascertain the principle of the decision in this case. But all the judges conceded that in England, the marriage should be celebrated *in facie ecclesiæ*.

It is not necessary to pursue farther the course of American adjudication. We have cited a sufficient number to show that their testimony is not uniform in favor of the looser rule as the common law rule of marriage. And whilst in some states an indisposition is manifested to avoid a marriage because of a departure from ceremonial, all the cases as with one voice, attest the fitness of the observance of some form, in the celebration of the rites of marriage, which shall serve in the future as evidence of the fact.

We conclude by referring to 1 Parsons on Contracts, 557, for a compendious exposition of the general subject. The conclusion of the learned author, as given in note (t. page 561) seems to be that a contract *per verba de præsenti*, without ceremony or celebration of any kind, does not constitute a valid marriage at common law, we refer also to 2 Roper on Husband and Wife, Addenda No. 1.

TH. S. ALEXANDER,
For Plaintiff in Error.

Supreme Court, U. S.

In Error to the Circuit Court of the United States, for the District of Maryland.

RICHARD S. BLACKBURN,
PLAINTIFF IN ERROR,
vs.
THE LESSEE OF GEORGE T. CRAUFURD & OTHERS,
DEFENDANTS IN ERROR.

BRIEF OF DEFENDANTS IN ERROR.

DR. David Craufurd, late of Prince George's County and State of Maryland, died intestate in December, 1859, leaving in said County, a large and valuable landed estate. Immediately after his decease Richard S. Blackburn, the Plaintiff in Error, assumed possession of said estate, claiming (together with several other parties, residents of the State of Virginia) to be entitled to the same as the next of kin to said intestate, being first cousins to said intestate. On the 2nd of October, 1860, George T. Craufurd and his three sisters brought an action of Ejectment in the Circuit Court for the said County, to recover possession of the same, they being the children of Thomas B. Craufurd (the only brother of the intestate, but who had died before said intestate) and therefore claiming the said estate as being the next of kin and nearer than Blackburn and his co-claimants to the intestate, David Craufurd. On Blackburn's suggestion that he was a resident of Virginia, the cause was removed for trial into the Circuit Court of the United States for the Maryland District, in which last named Court it came on for trial at the November term, 1862, and was there ended by a verdict in favor of the lessors of the Plaintiff. During the trial eight exceptions were reserved by the Defendant there, (the Plaintiff in Error) the first seven thereof referring to questions of evidence, and the eighth to instructions of the Court delivered to the Jury.

It is proposed to consider these in the order in which they appear upon the record—premising that there are certain material typographical errors in the printed record, which have been corrected by agreement of Counsel, as will appear by an Appendix to this statement, and which are now brought to the notice of the Court as a necessary preliminary.

The great leading question involved in this suit was touching a marriage between the parents of the Lessors of the Plaintiff which was kept secret until the death of the intestate from motives of policy inculcated by his deceased brother, the father of the Defendants in Error—this substantial issue of legitimacy being found by the Jury in favor of the Defendants in Error, this writ of error has been brought to reverse the rulings of the Court below.

FIRST EXCEPTION.

The First exception involves the admissibility of certain passages in the deposition of the Rev. John P. Donellan. On motion of the Plaintiff in Error, the Court excluded most of said deposition, but refused to exclude other portions, to which refusal the exception is taken Record 10 and 11.

We will contend that the Court did not err in the several rulings excepted to, viz:

1st. After the proof given by Mr. Ferguson (in p. 11) of the death of Mrs. Sarah Evans and her being the sister of Elizabeth Taylor, the mother of the Defendants in Error, her declarations (as proved by Mr. Donellan) "of the marriage between her sister Elizabeth Taylor and Mr. Craufurd," were admissible in evidence.

The hearsay of deceased relatives is always admitted on questions of marriage and pedigree.

See Cope *vs*. Peirce, 7 Gill, 247—264; 4 G. & J. 416; 4 Campb. 415.

It is sufficient that the hearsay proceeds from a decedent connected with one branch of the family to which it relates. To require proof of his connection with both branches would be to render the declaration itself superfluous, as the very fact in proof of which it is offered would then be established.

Hubback on Succession, (48 Law Lib.) p. 660.
2 Russ & Mylne, 147—156.
1 How. 231.

These authorities answer fully the objection that Mrs. Evans (whose declarations were offered in evidence) was herself a stranger to the blood of the Craufurds.

By reference to Mr. Donellan's answer to the third Interrogatory in page 10, it will be seen that Mr. Donellan's acquaintance with Mrs. Evans terminated in 1840, and therefore her declarations to him were made before that date, and *ante litem*.

The date of the death of David Craufurd, the intestate, was subsequently to the first exception being signed, proved by the Plaintiff in Error, when he offered in evidence the transcript of the administration record. Page 14.

In this transcript, the death of David Craufurd is admitted by all parties to have occurred in 1859. See p. 16 and 17.

And it is so conceded in the Brief of Plaintiff in Error. Page 1.

The Court below only rejected so much of this transcript as related to the verdict and order thereon, as set forth (which were relied on as estoppel.) Pages 14 and 66.

It follows that the said transcript showed the date of the death of David Craufurd, and therefore cured the omission to show that date in the first exception, *so far as it might be material* in considering the admissibility of Mrs. Evans' declaration. The rule of this Court is, that "if in the progress of the cause, the matters of any of those exceptions become wholly immaterial to the merits, as they are finally made out at the trial, they are no longer assignable as error, however they may have been ruled in the Court below—there must be some injury to the party to make the matter generally assignable as error."

Greenleaf *vs.* Birth, 5 Peters, 434.
13 Howard, 333.

But, independent of this authority, the declarations of Sarah Evans having been made to Donellan prior to 1840, were admissible to establish the marriage of her sister with Craufurd, because made *ante litem*, this suit having been instituted on 2d October, 1860.

Record, p. 1.

The Plaintiff in Error now denies that these declarations are admissible, yet he once contended for the principle of their admissibility, and that principle was adopted by the Court of Appeals of Maryland in another branch of this case, as shown by their opinion, in p. 32 of this Record, in which they declare the admissibility ot all such declarations to connect families.

See his Brief, p. 2 & 3.

The adverse argument proceeds on a denial of the law as so clearly and conclusively established by Lord Brougham in the case of

Monkton *vs.* Attorney General, 2 Russ & Mylne, pp. 147, 155, &c.

It will hardly be credited, after reading this onslaught on that decision of Lord Brougham, that the counsel of the Plaintiff in Error actually gained a branch of this very case in the Court of Appeals, on the authority of that decision, as shown in the opinion of the Court of Appeals copied into this Record.

Record, p. 32.

That opinion of Lord Broughman being thus approved by the Court of Appeals of Maryland, upon the argument of the counsel of Mr. Blackburn, ought now to conclude them from contraverting it in this Court according to the principle ruled in

13 Howard, 336--7.

But the decision of Lord Brougham is fully adopted as law by Mr. Hubback in his very able work on the Law of Succession.

Hubback on Succession, 48 Law Lib., 660.
And virtually by this Court, in 1 How. 231.

See 13 Vesey - 140.

The cases cited on the other side do not really clash with this decision, and if they did, would not overthrow the unanswerable reasoning of that distinguished Chancellor.

It is a mistake in the brief of the adverse counsel, (p. 3,) to claim that Lord Cottenham was dissatisfied with this opinion of Lord Brougham, for he declared expressly that he gave no opinion on that question.

10 Clark & Finelly, pp. 500—1.

But the counsel omitted to state in their brief that the judgment of Lord Brougham was affirmed, Lord Campbell concurring.

10 Clark & Finelly, pp. 506—7.

The decision of Sir W. Grant, cited on the other side, in G. Cooper's Rep., p. 39, was in 1809, and manifestly not fully considered, and was in itself right, as the declarations were made after doubts had arisen touching the pedigree. The case in 5 Clark & Finelly, 539, does not support the counsel who cite it, as the declaration was not made by the step-son but by his steward, a stranger in every way.

2d. The objection made by the Plaintiff in Error to so much of Mr. Donellan's answer to the 4th Interrogatory, as relates to his having entered "said baptism in said register," (pages 10 & 11,) was properly overruled. and seems to be abandoned in the brief of the Plaintiff in Error, because it was competent to prove by the witness Donellan, (who was examined in Illinois,) that he had entered the baptism of one of the children of Elizabeth Taylor in the register at St Patrick's Church, which was not shown to him at his examination. Upon a question of legitimacy, the baptismal register of children is legal evidence.

Slavey *vs.* Wade, 1 Mylne & Craig, 357.

8 Vesey, 422—430, side page.

1 Hubback on Succession, 47 Law Lib—249 side p.

And the materiality of this evidence is shown in the third bill of exceptions, where (in p. 13) that very register is produced to a witness and the entry therein of the baptism of "George Thomas, son of Thomas Craufurd and Elizabeth Taylor, his wife, born 7th Sept., 1836—sponsors, John and Sarah Evans," proved to be in the handwriting of said Donellan. Assuredly it was competent for us to prove by

Mr. Donellan, in Illinois, that he had made a certain entry in a book, and then to produce that book to another witness and prove the contents of the entry as made to his knowledge in the handwriting of said Donellan.

Even if Donellan had erroneously been allowed to testify to the contents of his entry in said register, the error would have been cured by the subsequent production of the primary evidence contained in the book itself, accompanied, as it was, by the testimoney of Callan to the handwriting of Donellan.

Greenleaf *vs.* Beith, 5 Peters, 134.

The materiality of this baptismal register is that it shows "that one of the Defendants in Error was baptized as far back as 1836, as the lawful child of Thomas Craufurd and Elizabeth Taylor, his wife," and it was only admitted for that purpose.

3. The Court properly admitted "the imperfect recollection by Mr. Donellan of his having seen the entry of the disputed marriage in the marriage book of St. Patrick's Church, which, as proved by Rev. Mr. Boyle, has been lost since 1840."

Record, p. 11.

Any recollection of a fact by a witness, however indistinct or imperfect it may be, is competent for the consideration of a jury, although it may be a low degree of recollection.

1 Phillips' Evidence, by Cowan, Hill and Edwards, p. 425, and also, Note 123.
1 Johns. 99 and 102.
5 Pick. 248.
1 Greenleaf Ev., S. 440.
4 Shepley, 247.

The marriage book being lost, the imperfect recollection of its contents was clearly admissible.

But it is argued *e-contra* that we have not sufficiently accounted for the non-production of the marriage record in St. Patrick's Church, or shown that the entry seen by Mr. Donellan was made by the person officiating—and that it was made recently, after the event registered, and that the person so registering the marriage is dead.

It will be seen in pages 10 and 11 of the Record, that we were allowed to prove without objection, by Mr. Donellan that he was formerly Assistant Pastor of St. Patrick's Church from 1836 to 1840, and knows that there was a marriage Register kept at that Church during the time he was there, and previously, and that while he was there the same book was used which had been previously; that when he left St. Patrick's (1841,) that book was in the Church in the custody of Father Matthews, the Pastor of the Church, and ought to be in the charge of the present Pastor. It will also be seen in page 11 that we were further allowed to prove, without objection, by Rev. Mr. Boyle, that he was Assistant Pastor of St. Patrick's Church, and had been since 1853, (meaning to the present time) and had searched frequently for the marriage Registers of said Church, and been unable to find any of a date earlier than 1840. All these facts were put in evidence by a failure to object to them, so that here was direct proof of the existence and loss of the Register, and the only objection taken by the Plaintiff in error was to the imperfect recollection by Donellan of the contents of the missing book. The brief of the Plaintiff in Error now raises an objection, that the loss of the book is not sufficiently proved, and to support this objection, argues that it may be yet in the custody of the Pastor of St. Patrick's, and this in the face of the statement of the Assistant Pastor, Mr. Boyle, "that after frequent searches, he could not find it at the Church" where Donellan last saw it in 1841, more than twenty years before this trial. Donellan proves it was kept at the Church, in charge of the Pastor, and was of course accessible to, and used by him as Assistant Pastor. Mr. Boyle, the present Assistant Pastor, equally entitled to the custody and use of the book, proves that it cannot now be found at the Church. We have thus shown it is not at the Church, where it ought to be, in the charge of the present Pastor, for it is hypercritical to say that the Assistant Pastor is not the Pastor, and that his oath to the fact of its loss is insufficient, and we ought to have brought the Chief Pastor, or Father Matthews, now dead, also to prove the loss. We consider this objection to be fully met by the cases in 7 Peters, 101–2, and 6 Binney, 59, where it was held that the party who had the paper need not be called.

In our case it is proved by Mr. Donellan, that the book was kept at the Church, and Boyle shows it is not there now.

All that is necessary, is to show a presumption of the loss, and this is done by proving that the present Assistant Pastor has frequently searched for this Register during the last seven years in vain at the Church, where it had always been kept, and where it was daily required for use.

After the lapse of some twenty-seven years from the date of the alleged marriage in 1835, we confidently maintain that a reasonable presumption of the loss of the document was shown by the testimony of Father Boyle so as to admit secondary evidence, and this too, when no objection was taken to the sufficiency of the proof of loss. The proof of the loss of this marriage record so as to admit secondary evidence, is better established than was the loss of the documentary proof in

Minor *vs.* Tillotson, 7 Peters, 101—2.
De Lane *vs.* Moore, 14 How. 264, &c.
6 Binney, 59.
2 Alabama Rep. 61.
5 " " 435.

These cases clearly establish that this evidence of loss was amply sufficient. In 7 Peters, 101, the loss of a title paper traced to the hands of Gen. Hampton, was proved by his handing over a bundle which he said contained all his papers connected with that subject. His affidavit of the loss was not taken.

It is also objected that before Donellan could testify to the contents of the lost record we should have proved that the entry he saw more than twenty years ago in the lost book, was in the handwriting of a deceased party, who officiated on the occasion, and who entered it recently after the occurrence. Such strictness cannot be legally required after such a lapse of time and the loss of the document—all these presumptions of fact flow from the statement of Donellan that he knows the entry to have been made in the official Register regularly kept at the Church, though he has forgotten the handwriting of that particular entry. His testimony authenticates the entry as genuine, and it being shown by Boyle (p. 11) that it was the duty of the Pastor to keep such a registry of marriages, every presumption of law after this lapse of time and the loss of the book would be in favor of the genuineness of the entry having been made officially and regularly by the Minister officiating on the occasion of the marriage.

The argument of the adverse Counsel is, "that the marriage registry, if in existence, would not be evidence, because it was not required by law to be kept nor would a sworn copy be received and *a fortiori* the clouded recollection of a witness as to its contents ought not to be received." See brief of Plaintiff in Error, p. 4. This argument is more plausible than substantial.

There are conflicting decisions in England, no doubt, but as there is nothing peculiar in a marriage Register to distinguish it from other books of entries, it should now be admitted in conformity with the modern doctrine, by which it is not necessary that the record or book should be kept by requirement of law, to make its entries legal evidence, when properly verified.

This Court in Nicholls *vs.* Webb, 8 Wheat. 326, held that the entries in the book of a Notary Public though not required by law to be kept, were admissible in evidence after his death. In 4 Md. Rep. 417 and 418, the Court of Appeals of Maryland held that the Notary Public's books properly verified, were evidence *per se*. and not merely to refresh the recollection of the witness. It is true that these cases assume generally that the entry must be verified by the witness, if alive, or by proof of his handwriting if dead.

But it will be seen that when the Court below ruled this point, it related to an entry made over twenty years before the trial, and as the case then stood, there was no proof of Fijeac being alive. Besides which, the record was not in *esse*, and could not be verified by Fijeac upon inspection, and the memory of Fijeac had so far failed, that as he states, no marriage record was kept at St. Patrick's Church. Record p. 75. While Donellan not only proves that such a record was kept previously to 1836, when he went there as Assistant Pastor, but that he saw this very marriage therein recorded.

Record, p. 10. Ans. to 2d Int.
" " 5th Int.

As the case stood when the point was ruled, there would be a legal presumption of the death of Fijeac after thirty years.

9 Peters, 663.

And we might say, in this case, after 27 years.

And if this presumption was rebutted by subsequent testimony to show that he was alive, the remedy of the Plaintiff in Error was to move the Court to reject the contents of the Registry, because not verified by Fijeac; but he failed to make that motion and must stand on the case as made at the time of the first exception. But even if the subscribing witness to a deed thirty years old be alive, he need not be called if the deed was in proper custody and no suspicion of fraud.

2 Phillips' Ev 484.
Doe *vs.* Burdell, 4 Ad. & Ellis, 1.

"*Omnia rite acta sunt presumunter,*" after 10 years, where the witness forgets the entry made by him.

1 Barb. ~~Ch~~. R. 538. Supreme Court.

This, then, is a case "*sui generis,*" where the document being lost could not be verified by the witness who made the entry and has forgotten it, or by proof of his handwriting; and the question recurs whether in this state of facts the Court erred in allowing us to give secondary evidence of the entry in the lost book which is proved to have been officially kept thirty years ago, and which was seen by Donellan in its proper place of deposit, and at a time when no suspicion could attach. As there are no degrees in secondary evidence, we think the imperfect recollection by Donellan of its contents was admissible.

Doe *vs.* Ross, 7 M. & W. 102.
Brown *vs.* Woodman, 6 C. & P. 206.
17 Md. R. 71.

Fijeac had also forgotten Elizabeth Taylor, though he baptised her child, as Callan shows,

Record p. 13.

And as the order of proof was in our control, as decided in 9 G. & J., 476, and 3 Md. R., 251, we could first legally prove the contents of the lost book, and have afterwards proved it was in the handwriting of Fijeac, and this exception is only to the contents of the book.

Many of the English cases seem to point to a Marriage Register as evidence when it is required by law to be kept, but in some cases such registers have been received when not required by law to be kept.

16 Vesey, 59.
Lawrence *vs.* Dixon, Peake, 136.
Doe *vs.* Maddox, 1 Esp. 197.
45 Eng. C. Law Rep., 414.

It will be observed that the Marriage Registers kept in the Fleet prison were tainted with suspicion.

1 Bishop on Marriages, § 293, note 3.

But the principle of these decisions is repudiated by this Court when it allows books regularly kept, but not required to be kept, to be admitted in evidence as above stated; and if there was to be a relaxation of rules of evidence in any case, it should be in a case like this, where hearsay is always received to establish marriages and pedigree, and such was the unanswerable argument of the Chancellor in 16 Vesey, 59.

In 15 Johns. 229, Judge Thompson admitted such Registers of Marriage as familiar evidence.

See also, 5 Cowen, 237.

In 1 How. 232, an advertisement was admitted to the Jury without any proof who wrote it, and this on the issue of marriage *vel non*.

In 3 Greenl. Rep. 223, Chief Justice Mellen admitted that a town Registry of Marriages, without being verified by the party who made the entries, or by proof of handwriting, was competent proof, because it came from the custody of the Clerk, and there was no suspicion of fraud, and in that case no law required it to be kept.

In Shorter *vs.* Rozier, 3 H. & McH. p. 236, a marriage between servants was proved by a copy of a recorded *ex-parte* affidavit of the wife of the master of the servants.

And in 2 H. & J. 360, 3 Exception, the Court of Appeals considered the copy of the priest's certificate and of the affidavit of a witness to the marriage admissible, upon proof of the loss of the Parish Registers of St. Mary's County. And this Court in 5 Peters, 472 and 476, admitted a Burial Church Register to show the date of a death—why should a Marriage Church Register be distinguished?

But be this as it may, no objection was taken to the proof by Donellan that such a Marriage Record was kept at St. Patrick's, or by Boyle, that it was lost. The only point of the exception was manifestly levelled at the imperfect recollection of the contents of the lost document which had been verified by Donellan, as officially kept in the public Church and proved to have been lost for more than twenty years by Boyle.

So far as it is argued that we should have called Fijeac, himself, to prove the entry in a lost book, the existence of which he swears he does not recollect, it would be a sufficient answer to say that he is oblivious and absent residing in France, and therefore stands as if he were dead, for all legal purposes.

Alton *vs*. Berghaus, 8 Watts, 77.
Sterrett *vs*. Bull, 1 Binney, 234—7.
2 McCord, 349.

This principle is expressly ruled in 15 Md. R. 522, and in 1 Barb. ~~Ch~~. R. 538. Supreme Court.

As shown before, after thirty years the subscribing witness to a deed need not be called, and we do not see why we should call Fijeac.

But the required proof is supplied by the act of the Plaintiff in Error. He has called Fijeac, who denies that a Marriage Record was kept at the Church, and all recollection of the marriage.

Can't we show he was mistaken, and that there was a Record of that marriage entered thirty years ago by him?

In 45 Eng. Com. Law, 414, a copy of a Parish Register purporting to be signed, but not proved to be signed by the parties to a marriage, was admitted by Lord Denman to corroborate the evidence of cohabitation and the presumption of marriage, and in this case the secondary evidence was properly admitted for the same purpose.

Butler's N. P. p. 266, states that Registers of Births, Deaths and Marriages, which are not Records, are good evidence.

In 2 Strange, 1073, the Baptismal Record was received, though not kept by law, and the day-book, from which it was made up, rejected, though it stated the child was baseborn—so strongly did the Court favor legitimacy.

SECOND EXCEPTION.

Elizabeth Craufurd having (as stated) proved that a secret marriage took place between Thomas B. Craufurd and herself, on the second day after the baptism of her second child, Sarah, by Father Fijeac, at St. Patrick's Church, the Plaintiff in Error excepted to the admission of that baptismal entry, (proved by Callan to have been in the handwriting of Father Fijeac,) to fix the date of said marriage.

See Record, 13.

For the entry—See Appendix.

We maintain that there was no error in this, because the date of the marriage was important to fix the legitimacy of the children born before that event, if accompanied with subsequent acknowledgment, as proved in this case, under the Act of Maryland, of 1786, ch. 45—§ 7.

And it was even more important to fix the legitimacy of the two Plaintiffs who were born after the date of that marriage, as shown in the subsequent evidence, and as to whom no subsequent acknowledgment by Thomas B. Craufurd would be necessary, to legitimate them.

It is objected that Father Fijeac, living in France, should have been produced to verify his entry of the baptism. But as it was a record officially kept at that church, we do not see the necessity of doing more than verifying it, as we did by Mr. Callan, and it will be observed that the entry was twenty-seven years old, and when admitted by the Court, no proof had been given that Fijeac was then alive. After thirty years the witnesses to a deed are presumed dead.

9 Peters, 663.

And even after ten years 1 Barb. ~~Ch.~~ R. 538. Supreme Court.

We also refer, upon this point, to our observations touching the Marriage Register, in the preceding pages of this brief. *Ante p.* 9 &c.

The counsel are mistaken in their brief, p. 6, when they say we did not prove Fijeac's handwriting in this Baptismal Registry.

Record, p. 13.

THIRD EXCEPTION.

We have already partially discussed this exception in our remarks upon the first exception. The Court properly admitted the baptismal record of the third child, George Thomas, for the double purpose of fixing the date of the said baptism, and the fact that he was baptized as the lawful child of Thomas B. Craufurd and Elizabeth Taylor, his wife.

Record 14.

In page 10 Mr. Donellan states that he had entered said baptism on the register, and this evidence being already in under the first exception, and not objected to by the brief of the Plaintiff in Error in the argument of that exception, we hold that it is too late, while arguing the third exception, to ignore the fact, as they claim to do, that Donellan himself had proved he made that entry in the book.

The baptism of one of the lessors of the Plaintiff, as the lawful child of his parents, is justly regarded as high evidence of legitimacy and its force is not impaired by the fact that there is no affirmative proof that the father was present. He was confessedly alive at the date of that baptism, and the presumption would be that he was present, or at least consenting, to the assertion contained in the register of a baptism made in the presence of sponsors.

Slavy *vs.* Wade, 1 Mylne & Craig, 357.
8 Vesey, 422.
1 Hubback, 47 Law Lib.—249 side page.

FOURTH EXCEPTION.

This Exception is of more importance and involves the question whether the record from the Orphans Court of Prince Georges County, touching the right of administration, as contested by George T. Craufurd, one of the Lessors, and Blackburn, the Defendant below, was admissible.

1. As estoppel against all the lessors, claiming title as co-heirs.

2. As estoppel against George T. Craufurd alone.

3. As *prima facie* evidence to support the issue on the part of the Defendant Blackburn.
Record, p. 14.

It will be seen at the threshold of this enquiry that the transcript of the proceedings containing the verdict on issues sent from the Orphans Court, was never returned from the Court of Appeals to the Court of law which tried the issue, but was directly carried to the Orphans Court and filed there. Record, pp. 52 and 65. We will insist that this was irregular, and the transcript never was properly certified to the Orphans Court, nor could it be considered any legal foundation for the grant of letters to Blackburn, because the 1st Vol. of the Md. Code, p. 674 § 250, requires the proceedings to be as directed by law on the trial of issues, "and those proceedings are required in page 667 § 224, to be certified under the seal of the Circuit Court, which tried the case, to the Orphans Court, and the verdict, so certified, shall establish or destroy the claim." That the Court to which the issue is sent can give no judgment, and must certify the verdict to the Orphans Court, is established in Vanness *vs.* Vanness, 6 Howard, 67—8—9.

This verdict, therefore, was never legally certified to the Orphans Court, and the letters were granted without any legal evidence of the verdict on the issue sent.

But if we are wrong in this, we proceed to other considerations.

Immediately after the death of said intestate, the aforesaid Blackburn possessed himself of the large personal estate left by him, and applied to the Orphans Court of said Prince George's County, on the 12th January, 1860, for letters of administration on said personal estate, claiming a grant of letters as the eldest male heir and next of kin (first cousin) to said intestate of inheritable blood. This petition was answered by George T. Craufurd, who also, on the 13th of the same month, filed a counter petition claiming a grant of letters to himself on the ground that he was the eldest next of kin (being a nephew) of said intestate, and therefore entitled as against said Blackburn.

Printed Record, pp. 15, 16, Sqq.

The answer of George T. Craufurd to Blackburn's petition alleged, among other things, that he was one of the children of a marriage between Thomas B. Craufurd (a brother of the intestate,) and one Elizabeth Taylor. (p. 17.) The answer of Blackburn to Craufurd's petition, admitted that said George T. Craufurd, and his sisters, were the children of said Thomas B. (the brother of the intestate,) by said Elizabeth, but alleged their illegitimacy. These cross petitions and answers came on for hearing in the said Orphans Court, on the 24th of the same month, when said George T., by his supplemental petition, asked that issues might be framed for the trial of the pending controversy between himself and said Blackburn, and tendered two issues for the adoption of the Court, to wit: (p. 29.)

"1st. Whether your petitioner, George T. Craufurd, is one of the next of kin to the said David Craufurd, on the part of the father of said David Craufurd?"

"2d. Whether there is any male, other than your petitioner, George T. Craufurd, of the next of kin to the said David Craufurd, on the part of the father of said David Craufurd?"

The said Blackburn thereupon tendered to the Court, for its adoption, also a third issue, to wit:

"3d. Whether the said Thomas B. Craufurd was ever lawfully married to the said Elizabeth Taylor, either before or after the birth of said George T. Craufurd?"

All of which issues were directed by said Orphans Court to be transmitted to the Circuit Court of the same County for trial, from which Court the record was, upon suggestion, transmitted to the Circuit Court for Charles County, in the same State, for trial, where the said cause was tried at May term, 1860, resulting in a verdict for said Blackburn, (the Defendant there,) upon all the issues. An Appeal having been presented to the Court of Appeals, on certain exceptions reserved by the Plaintiff there, the judgment was affirmed, and a transcript of the said trial and affirmance having been filed in the said Orphans Court without being certified to it by the Circuit Court which tried the issues, it passed a final order on said cross petitions and answers on the 23d March, 1861, granting letters of administration to said Blackburn on the estate of the intestate. (p. 65.)

Upon this trial in the Circuit Court of the United States, this whole record was offered by the Defendant below, separately, for three purposes. (p. 14, bottom)

1. As an estoppel, on the question of marriage, against all the lessors of the Plaintiff in this action.

2. As an estoppel against George T. Craufurd, one of the lessors of the Plaintiff in this action, and

3. As *prima facie* evidence to support the issue on the part of the Defendant.

The Court refused to allow said record to be read in evidence for any of said purposes. (p. 66.)

And we maintain that in this there was no error.

1. Because the matter in issue in the Orphans Court was the grant of letters, and the judgment of that Court is merely that letters be granted to Blackburn; nothing else is determined by the judgment of the Orphans Court, but that Blackburn shall have the letters—it does not determine that Craufurd is not next of kin, or that Blackburn is next of kin.

It is true that issues were framed to furnish evidence to that Court touching the relationship of Craufurd alone, but the judgment of the Court merely decides that Blackburn shall have the letters, *non constat* on what ground he obtained the letters, nor is there any judgment deciding who is next of kin; the verdict negatives the claim of Craufurd, but there is no judgment on that point, and all the authorities say it is not enough that the point was decided by the jury, there must also be a judgment on the matter in issue.

1 Greenleaf Ev. § 529.
5 Greenleaf's R. 185.
13 Mass. 155.
8 S. & R. 305.
1 Pick. 371.

The verdict without the judgment is only evidence of the fact that a trial was had, it is the judgment which concludes.

Buller's N. P. 262.

By the Maryland law, neither Craufurd or Blackburn were absolutely entitled to administer so as to be notified by the Court.

1 Md. Code, p. 622, § 33 and § 31.

Blackburn was not preferred to the sisters of George T. Craufurd, even if he were illegitimate, as they are nieces preferred to Blackburn, who was a cousin only.

1 Md. Code, p. 622, § 25.

If there has been no judgment, then the pleadings are not evidence of the facts recited.

Holt *vs.* Miers, 9 C. & P. 191.

There was then no estoppel, even as against George T. Craufurd, because no judgment determining expressly, or by necessary implication that he was not next of kin, but Blackburn was.

For these reasons it was held in 1 Young & Collier's New Reports, p. 585, that the judgment of the proper Court in awarding administration to a party could not be admissible to establish or deny a title in the distribution of the estate. This case is ably reasoned, and commends itself to this Court, for its sound doctrines and practical illustrations.

But it is said to be impugned by the case in 1 Philips, Ch. R, p. 582, cited on the other side. How far this last decision is regarded as conflicting with the first, will be for this Court to decide, if they consider it an open question after their own decision in

Aspden *vs.* Nixon, 4 How. 499.

In this case of Aspden and Nixon, John Aspden sued, and after his death, his representatives, had been defeated by the English Chancery Court in their claim that John Aspden was heir and devisee of Matthias Aspden. After this decree in England, the administrator and distributees of the same John Aspden by their bill filed on the Equity side of United States Circuit Court, claimed, as heirs of said Aspden, certain property in Pennsylvania, and this Court held that by the rules of evidence the decree would not "be sufficient in separate suits pending in the same Court for different parcels of property even between the same parties."

4 How. 499.

A series of authorities is cited in pages 9 and 10 of the adverse brief, to show that the estoppel applies between the same parties or their privies, although the property in dispute is different.

But we confidently affirm that in every one of the cases cited, the point involved in the judgment relied on as an estoppel appeared expressly in the judgment or was necessarily involved, and such was the case cited from

1 Phillips, Ch. R. 582.

In that case the Ecclesiastical Court had expressly adjudicated that the Claimant was illegitimate, and it was held to bar him in a subsequent suit for distribution of the personal estate.

And the same remark applies to the cases cited from the decisions of this Court and especially

24 How. 342.

Nor does any of the cases, cited establish the effect of letters granted by a mere Probate Court on the title to real estate.

The case of Warford *vs.* Colvin, in 14 Md. R. 532, cited by the adverse Counsel in page 10 of their brief, does not authorize their assertion "that in the absence of this express provision (the Act of 1831, Ch. 315,) it is very evident from the texture of the whole opinion, that the Court would have held the verdict on an issue from the Orphans Court conclusive in a second suit, on the fact so found." On the contrary, the Maryland Court expressly say that they "need not determine what effect on the title to land, the Probate of a will in the Orphans Court would have under the Act of 1798," and then they proceed to decide that case alone under the Act of 1831, which gave to the Probate a *prima facie* effect as to lands.

14 Md. 554.

2nd. Because the Orphans Court by its grant of letters had no jurisdiction to affect real estate. In 14 Maryland Rep. 557, the Court of Appeals declared that by the Common law, the Probate of a will in the Ecclesiastical Court had no effect whatever on the title to land.

And such undoubtedly was the principle of the Common law.

Roscoe on Real actions (Law Lib.) 591 side page.
Bul. N. P. 264.
1 Rolls. Abr. 678.

And it has been held that where the heir at law had proved the will in the Ecclesiastical Court, he was not estopped from denying in ejectment for real estate the testamentary capacity of the testator.

3 Stark on Ev. 1708.

So that at Common law there was no jurisdiction in the Probate Court to affect real estate, and such is the law in other States.

5 Rawle, 80.
11 Georgia, 272.

7 How. 198.
24 How. 240.
Darby *vs*. Mayer, 10 Wheat. 465.

This Common law doctrine remains in full force in Maryland to this day with the single exception caused by legislation prior to 1800, that the Probate of a will in the Orphans Course has a *prima facie* effect on the real estate.

This is very clearly established by the masterly review of the Maryland law in the successful argument of Messrs. Dulaney and Price in

14 Md. Rep. 537.

As well as by the adjudged cases cited by them in

14 Md. R. 537.

But in Darby *vs*. Mayer, 10 Wheat 465, this Court decided that the probate was not, by the law of Maryland admissible in evidence, as against the real estate.

The proposition now, is to engraft on the jurisdiction of the Orphans Courts of Maryland a new power over real estate unwarranted by any precedent or legislation, and to make the grant of letters after a verdict on the issues conclusive or at least *prima facie* on the title to real estate.

We confidently maintain that so far as the real estate is involved, no action of the Orphans Court can bind or prejudice the title of the heir to his real estate, save and except in the case of the probate in that Court of a will of real estate which then affects the real estate *prima facie*. See also on this question.

11 G. & J. 173.

It will be seen that the Orphans Court has no jurisdiction over real estate, and no constructive jurisdiction whatever.

1 Md. Code, 668 and 675 § 252.

In England, the Ecclesiastical Court has exclusive jurisdiction over the question of marriage, and its judgment *ex-directo* binds all the world, like a decree *in rem*.

B. N. P. 262–3.
Carthews, R. 225.

3. Because the verdict of the jury on the issues was but evidence when certified to the Orphans Court, and stands on same footing as evidence by witnesses, and cannot be segregated from that record to found an estoppel by the evidence of that verdict, and it was so expressly ruled in

14 Md. Rep. 555, &c.

4. Because estoppel must be mutual, and as Blackburn was not concluded, and the issues did not involve his title as next of kin, he cannot estop his adversary.

5. Because even if we are wrong, and the verdict on issues is admissible against George T. Craufurd, the only one of the lessors contesting that case, then we submit that the error of the Court in rejecting the evidence *quo ad him*, was not prejudicial to Blackburn, because conceding that the estoppel concluded George T. Craufurd from claiming as one of the heirs at-law of Daniel Craufurd, the only effect would be, to vest the whole landed estate in his three sisters, and to intercept it by their claim before it could pass to Blackburn and the remoter collaterals. In other words, Blackburn cannot complain of an error which did not prejudice him, but only refused, on his own evidence, to pass the whole title to the other Plaintiffs.

The immateriality of this ruling will be tested by the effect the estoppel would have had if admitted.

If it could only have estopped George T. Craufurd from claiming as heir, then it would only operate to transfer the share which would otherwise have devolved on him, to his three sisters, who are free from the estoppel.

6. Because the Plaintiff in error cannot claim a reversal under this 4th exception, unless he can show that the estoppel of George T. Craufurd as heir, would estop his co-heirs, who were no parties to those issues. That this would not be its effect on the merits of the case is virtually conceded in their brief.

See Brief of Plaintiff in Error, p. 11.

But his counsel seek to estop all the lessors upon the technical ground that they have counted on a joint demise and must fail if all have not title.

We may concede that this objection would have been fatal (assuming an estoppel on one of the lessors) at common law, but this case is governed by the express statute of Maryland, which alone is to be regarded.

The action was properly brought in the State Court in October, 1860. Record, p. 1.

Its removal to the United States Court because of the citizenship of the Defendant below, did not exclude the pending suit from the benefits of the State law regulating all suits in the State Courts.

At the date of this suit, the Code of 10 March, 1860, was in force, and expressly enacted,

1st. "That in all cases of joint holding by two or more persons, they may declare on a joint demise, whether they hold as joint tenants, tenants in common, or in any other manner."

2d. "That if title be shown in any of the lessors, a recovery may be had to the extent of such title, though other lessors may be joined who have no interest or may have parted with their interest."

1 Code, p. 528, § 50, 51.

Even if this action had been brought in the Federal Court, we should claim that the pleadings would be governed by the State law, as it is a common law action.

10 Wheaton, p. 1 and 51.
1 Peters, 604.
9 Peters, 329.
13 Peters, 45.

FIFTH EXCEPTION

Begins at p. 66, and ends on p. 79.

It raises the question of the admissibility of certain parts of Father Fijeac's deposition taken in France.

The parts rejected are,

1st. The part which speaks of the contents of a private memorandum kept by the deponent, and which he refused to produce.

In page 75 will be found the answers of the witness to the 4th and 6th Interrogatory, by which it appears that the witness kept a private memorandum of marriages celebrated by him, which he declined to produce, and then stated that the names of T. B. Craufurd and of Elizabeth Taylor do not appear thereon, adding that this is not a proof that he did not marry them, because he could have forgotten to write their names down.

We consider the rejection of the non-contents of the private memorandum tenable,

1st Because the document itself is the best evidence of what it contains or does not contain.

1 Phillip's Ev. 351.
6 S. & R. Ev. 135.
2 Phillip's Ev. 261, 577, 917, &c.

2d. Because the witness discredits the memorandum book kept by him, by stating that it is no proof that he did not marry the parties, thus showing that it is not a faithful record of all the marriages celebrated by him.

14 Md. Rep. 398.

The brief of the adverse counsel in page 15, seems to concede that the Court did not err in the exclusion of the non-contents of Fijeac's private memorandum, but only erred in the reason assigned for its rejection.

But the question in this Court is, whether the Court erred in its action and not in the reasons assigned.

3 Gill, 198.
4 Gill, 406.

There is no foundation for the argument in p. 15 of their brief, that we had no right to object to Fijeac's statement as to the contents of his book as we had by our 6th and 7th Cross-Interrogatories, required him to inspect his register and answer as to its contents

These Cross-Interrogatories are in Record, p. 58.

And do not warrant the observations of the adverse counsel in their brief.

The 8th Cross-Interrogatory alone refers to his private memorandum, and requires its production and its verification as a faithful record of every marriage celebrated by Fijeac.

The next question under this exception, is the rejection of the answer of Fijeac to the 9th Cross-Interrogatory and we maintain, it was properly rejected, because wholly irresponsive to the inquiry—he was asked whether in a supposed case he would have married parties clandestinely, and he evades the question by saying "he never did." The rejection of such an answer could work no possible prejudice to the Plaintiff in error.

The next question touches a portion of his answer to the 10th Cross-Interrogatory. Mr. Fijeac, after answering that he does not recollect whether he was aware of any penalty, which was the only point of enquiry, adds, "but I never married parties without a license"—and this addendum was correctly rejected by the Court, because it was not elicited by the Cross-Interrogatory, and because it was but an opinion of the witness, in the absence of all recollection of whom he had or had not married, after nearly thirty years had elapsed.

9 Gill & Johns. 721.
1 Phillip's Ev. 775.

Again it is said in p. 16 of their brief, that the witness had a right in answering our enquiry as to what he would have done in a given state of case to read his answer not responsive to the enquiry, but affirming that he had never had done so.

If the question was inadmissible it should have been excepted to, but being put without objection, the answer cannot be read in evidence unless responsive to the enquiry, which it clearly is not.

At the bottom of p. 10 their brief takes similar ground, and is met by a similar answer.

In regard to the question of casuistry raised, and the eulogy pronounced on Fijeac by the learned counsel, because he volunteered to state that he never had married parties clandestinely, to purge the state of sin in which they were living, and on the conditions stated in the Interrogatory, we do not regard such a discussion as any part of a legal argument, and waive it on our part.

SIXTH EXCEPTION.—(pp. 79 to 82.)

This Exception arose out of the Court's refusal to admit the testimony of Mr. Bowie, (counsel to Thomas B. Craufurd,) touching the declarations of said Craufurd in relation to the illegitimacy of Plaintiff's lessors, while consulting the witness professionally.

It will be seen that the witness was employed professionally, and received a fee for his advice in the very matter as to which he was offered. He was, therefore, properly prevented from testifying.

1 Phil. Evidence, 524—5, 139, &c.
4 B. & Adolph. 339. 13 N. H. – 551
Sharswood's Starkie's Evidence p. 34-38 n(1)

In 2 Md. Ch. Decisions, p. 240, (affirmed in 9 Gill, 361,) the very point was decided that counsel who had prepared a will, could not be heard to divulge the confidential communication of his client in reference to that will.

4 Hare 84
11 Wheat 294

In considering this Exception it will be seen that the Plaintiff in Error was allowed by the Court to read in evidence the will of Thomas B. Craufurd, the father of the Defendants in Error, declaring them to be his natural children, and to prove by the witness, Mr. Bowie, that said will was written by him in accordance with the directions and instructions of the testator.

Record, pp. 79 and 82.

1 Greenleaf's Evidence
§ 240 n. (4)
§ 243.

This Exception complains that the Plaintiff in Error was not allowed to go further, and prove by the witness the details of the conversation between him and his client, while consulting about the will. It is argued, on the other side, that this conversation, being part of the instructions of the testator should have been admitted though under the seal of professional confidence, because the Court allowed the counsel to state that the will was written in accordance with instructions.

1 My & K. 102

We do not assent to this logic for the following reasons:

1. The factum of the will was properly in evidence as a declaration of the alleged father of the Defendants in Error, and the proof of the execution of the will established, by presumption of law, that it was made in accordance with the testator's instructions.

4 Term 759.

There was no evidence offered by us to rebut this legal presumption, and the Plaintiff in Error, by the production of the will *ipso facto* obtained the declaration made by the testator therein, that his children were all illegitimate.

This was all that the Plaintiff in Error could legally claim, and the force of this public and recorded declaration could not be strengthened by proof of the detailed instructions to the counsel, on which this public declaration was based.

But the Court having erroneously allowed the Plaintiff in Error to prove that the will was in conformity to instructions, to fortify an undisputed presumption of law, it is now contended by his counsel that this error entitled them to insist that the Court should commit another error by the introduction of confidential statements made by the client to his counsel, and they gravely contend that the rejected declarations should have been received as part and parcel of the evidence so erroneously, at their own instance, allowed to be given to the jury.

Brief of Plaintiff in Error, pp. 19—20.

We deny that any party has a right to give illegal evidence, and then to ask the Court to allow him to offer further evidence, because it is part and parcel and explanatory of the illegal testimony already given by him.

We know of no such rule of law, and can see how such a principle would load a record with a mass of illegal testimony.

The Court of Appeals of Maryland have expressly ruled that the introduction of illegal evidence by one side, does not entitle the other party to give similar or illegal evidence.

Balto. & Susq. R. R. Co. *vs.* Woodruff, 4 Md. Rep. 242.

Mitchell *vs.* Sellman, 5 Md. Rep. 376.

It will be observed in our case, that the Plaintiff in Error himself proved that the will was prepared in accordance with instructions, and then, under the shelter of his own evidence, insisted that his witness should go further and detail the privileged communications from a client to his counsel, made previous to the execution of the will.

We have already cited authorities to prove that these statements were privileged, and could not be divulged.

We shall insist that the authorities cited by the counsel on the other side to establish that these rejected declarations were not privileged, are distinguishable from the present case, and do not apply. Some of them are admitted to have been cases where no objection was made.

See Brief of Plaintiff in Error, 21.

2. Conceding, for the sake of the argument, that the rejected conversations were not confidential, we still maintain that the Plaintiff in Error was not prejudiced, because he had already been allowed to read the will in evidence by which the testator, in the most solemn form, had declared his children to be illegitimate, and repeated it "*usque ad nauseam.*"

What more could he have proved by the proposed conversation?

By looking at the record, it will be seen that the error complained of is the rejection of the details of an irrelevant conversation as to the best mode of providing for these illegitimate children, whether by promissory notes, by deed, or by will, or by marrying the mother.

Now, these details were wholly immaterial, and did not strengthen the main fact declared by the testator in his will, and the full benefit of which was allowed by the Court.

Record, p. 81.

3. It is a rule of law that where a party offers a variety of evidence as a whole, and part is admissible and part is inadmissible, it is his duty to segregate the legal from the illegal, and he cannot complain if the Court rejects the whole as offered.

Whiteford *vs.* Burckmyer, 1 Gill, 127.

Now, a portion of this offer related to the advice given by the witness, Bowie, and another portion related to the belief of the witness that the mother of the Defendants in Error was no more than the mistress of the said Craufurd, and his children by her were illegitimate, and his advice to said Craufurd was based on that hypothesis.

Record, p. 81.

Upon no principle could the outside or independent belief of the counsel, touching the vital question of "*hæres vel non,*" be lugged into the case, under the insidious offer to give the whole conversation in evidence. We therefore submit that the Court did right in rejecting the entire proof as offered, leaving to the Plaintiff in Error the benefit of the solemn declaration of the testator in his will, and of the gratuitous proof that it was written by his directions.

In conclusion, we will remark that it is a strange will, in which the father *ex industria* proclaims to the world the illegitimacy of his children, but we furnished, to the satisfaction of the jury, the key to this mystery, by showing that this will was prepared and placed, by Thomas B. Craufurd, in the hands of Mr. Bowie (who was also the counsel of David Craufurd,) for the express purpose of lulling to sleep the suspicions of the aristocratic David, whose prejudices were greatly inflamed by the idea of a marriage between his brother and the low-born Betsy Taylor, which had in some way leaked out and reached his ears.

This unnatural, but politic will, answered one of the purposes of the wily testator, as it quieted his brother's fears and prevented his making a will.

But another object of the testator, Thomas B. Craufurd, failed, by a sudden attack of paralysis which took him off before the wealthy brother he vainly expected to survive, leaving this will uncancelled.

See Record, pp. 13, 57, 58.

Issue cannot be bastardised where a legal marriage is proved, even by the solemn will of the alleged father

Law Register, May, 1865, p. 426.
Goodman *vs.* Goodman, 28 Law J. R. 745.

Especially where a motive to deceive is shown.

1 Hubback, 47 Law Lib.—256 side.
Matthews' Presumptive Ev., 283.
1 Phillips' Ev., p. 248.

SEVENTH EXCEPTION.—(p. 82.)

This arose out of the Court's refusal to permit evidence to be given by Defendant below (to rebut opening statement of Plaintiff's counsel,) that Elizabeth Taylor had been debauched before her intercourse with Thomas B. Craufurd.

1. It was not competent for the Plaintiff in Error to impeach the credit of our witness, Mrs. Craufurd, by any evidence short of her general character for truth.

3 Md. Rep. 430.
1 Greenleaf's Ev., § 461.

2. Her general character for chastity only would be admissible in a prosecution for rape, and not particular acts of immoral conduct, even in such a case.

3 Greenleaf, § 214.
Russ & Ryan, Crim. Cases, pp. 209, 212.
2 Phillips' Ev., p. 952.

3. The lewd conduct of a mother may or may not be received touching the paternity of a child, if it shows an intercourse with other men than the alleged father, about the time of conception.

2 Greenleaf, § 150.
1 Phillips, p. 630.
Eddy *vs.* Gray, Charles Allen's Mass. Rep. p. —.
Law Register, Feb. 1863, p. 253.
16 Ark. 530.
6 Blackf., 1.
3 Munf. 495.

But the offer was to prove that Elizabeth Taylor was debauched, and had a child before she had illicit intercourse with Thomas B. Craufurd, and that he knew such fact, when his intercourse began. Therefore the proposed evidence could have no possible object but to impeach the witness by raising a collateral issue, touching some alledged previous misconduct.

The evidence could not be pertinent to rebut the marriage in issue, because the proposal bears on its face the admission that Thomas B Craufurd knew her unworthiness when his intercourse first began. If he was willing to accept her as his mistress, with a full knowledge of her previous lapse from virtue, it certainly would not warrant the legal presumption that, in the lapse of years, he did not become sufficiently attached to her to marry her secretly, rather than be separated by her awakened conscience in the manner stated by her.

Record, p. 13.

4th. The purpose announced in the offer of this evidence was to rebut the opening statement to the jury, of the counsel of the Plaintiff below, to the effect that Elizabeth Taylor was pure and undefiled when her intercourse with Craufurd began.

It has been expressly ruled in Maryland that the opening statement of counsel cannot affect questions of evidence.

Davis *vs.* Calvert, 5 G. & J. 310.

EIGHTH EXCEPTION.

This involves the instructions of the Court as given on the whole evidence.

Record, 92—3—4.

The Defendant below conceded the first and third prayers of the Plaintiffs.

By the first of these prayers the jury were told that the Plaintiff must recover, if the jury believed the marriage as testified to by Mrs. Craufurd, and the subsequent recognition by Craufurd of two of the lessors born prior to said marriage as his children, and the birth of the two other lessors after said marriage.

By the third prayer, as conceded, the marriage is valid, although no license was obtained.

The first instruction of the Court laid down no other law than was conceded by the Plaintiff's first and third prayers. The second instruction of the Court raises the important and interesting question as to what would invalidate a marriage by the law of Maryland.

Before entering on this interesting discussion we must criticise the querulous complaint made by the adverse counsel, that the Court showed a bias towards the marriage in question by calling the mother of the Defendants in error, by the name of Mrs. Craufurd. See brief of Plaintiff in error, p. 27.

And this nomenclature of a witness who, was as well, or better known by the appellation of Mrs. Craufurd than by any other name, is said "to be one of the many indicia of the strong prejudices against the Defendants' case in which the Court (unconsciously no doubt) indulged throughout the trial, and which must have had controlling influence over the minds of the jury." Truly may it be said that the counsel clutch at straws, when they upon such slight grounds make so grave and unfounded a charge against the upright Judge, whose only offence was to call the witness by her reputed name, even if her own evidence and the declarations of her husband that she was his wife, were not to be believed.

Record, pp. 12, 13, 14.

According to this argument the Court below were in a quandary upon the name of a witness. If it was partiality towards one side to call her Mrs. Craufurd, would it not have been partiality towards the other side to call her Elizabeth Taylor, and thus ignore all the evidence of the factum of marriage, followed as it was by cohabitation as man and wife in the family mansion at Greenwood.

In behalf of the excellent Judge by whom this case was tried, as well as the jury who are charged with being controlled by the mere name of a witness, we must indignantly protest against this unfounded accusation.

The first branch of the instruction tells the jury very properly "that they may find the marriage from the testimony of Mrs. Craufurd if they believe her, or from the acts and declarations of Thomas B. Craufurd in connection with all the other evidence."

So far there is nothing debateable in the instruction, but the contention arises on what follows, viz:

"And such marriage (if found by the jury) to be valid in this State requires only the consent of the parties, and would be valid, although the jury may find that it was not solemnized before any minister of the Gospel "

It will be observed, that by this instruction, the declaration of what is a valid marriage follows after the jury have found the factum marriage upon the whole evidence.

The Court tells them that such marriage (so found) requires only consent, and need not be solemnized before a minister of the Gospel.

But assuming that this instruction allowed the jury to find a marriage *impresenti* by consent of parties to be man and wife, and without the intervention of a minister of the Gospel. We are prepared to maintain, First, that the declarations of Craufurd to Mrs. Ferguson, (p. 12.) and the cohabitation at Greenwood as man and wife for several years, (p. 14,) all justified the jury even if they discredited the witness, Mrs. Craufurd, in finding a legal marriage at some time in any form in which a complete marriage could occur between the parties.

2. That marriage is but a civil contract, and for its validity in Maryland, requires nothing but the mutual contract of the parties, to be man and wife per *verba de presenti*, or per *verba de futuro*, followed in the latter case by sexual intercourse.

The brief of the counsel on the other side, attempts to establish

1st. That such a marriage was not valid at Common law.

2d. That it was not valid by the legislation of Maryland.
Brief of Plaintiff in error, 32 &c.

9 Clark 334

We do not propose here to follow the elaborate argument of the counsel on the first point to show what was the Common law on this subject.

11 Clark & Fin 331

It is enough for us to say, that the ablest Judges in England, were equally divided on that question in the celebrated case of

Green *vs.* Mellis, 10 Cl. &. Far. 534.

3 Doug 211.

And that Sir W. Scott contended that the Common law harmonized with the Canon and Civil law of all Europe on this subject.

Peake's nisi prius cases 305.

Dalrymple *vs.* Dalrymple, 2 Hagg. 57.

The counsel have failed to refer to the celebrated case of Jewell *vs.* Jewell, reported in 1 How. 233, where this Court was equally divided in regard to the law of Georgia in this respect.

11 East. 282.

In that case the Circuit Judge ruled that the consent of the parties was sufficient to make a marriage, if followed by cohabitation, and the jury finding in favor of the marriage, the judgment was affirmed by a divided Court.

1 Dow. 148, 181

But the common law doctrine on this vexed question, as well as that of the civil law, ought to be considered in this Court as put to rest by the decision in

2 Strange 934.

Hallett *vs.* Collins, 10 How. 181.

In this case Mr. Justice Grier emphatically declares that "the sufficiency of such a marriage at common law, though doubted in England in Queen *vs.* Mellis, never was doubted here. To the same effect is the decision by Mr. Justice Wayne in Gaines & Patterson.

Bracton b. 4 p. 303

6 How. 587

2 Black. C. 8 p. 133.

Upon this general question we would also refer the Court to

6 D. & E. 468–9.
1 Rob. Eccles. R. 309.
4 Johns. 52.
18 Johns. 348–9.

Cro. Car. 351.

2 Salk. 437

In New York, the validity of such marriages has been carried to the greatest extent, remarkable instances of which will be found in

6 Mod. 155.

Reeve's Domestic Relations 311.
11 Jurist 914.

8 Taunt. 830.

4 Bradf. 343. 9 Paige 611.
3 Bradf. R. 370.
3 Bradf. R. 374, &c.
1 Hill's R. 270. 8 Paige 544.
15 N. York R. 345.

As to the American doctrine it will be found to be as stated in 10 How. 181. 2 N. H. 268
45 Maine, 367.
3 A. K. Marshall, 368. 19 N. H. 254
1 Bouvier's Inst. 101 and 109.
2 Greenleaf's Evidence, § 460. 2 Vt. 151
6 Alabama, 765.
2 California, 50~~7~~. 3 16 Ill. 85.
See also 35 Pennsylv. Rep. 157.
6 Jones, (N. Car.) 421. 2 Kent's Com. 86.
2 Metcalf (Kentucky) R. 146.

It will be seen by the cases cited, in 10 Howard 181–2, that the marriage was equally valid in the absence of witnesses, who are only resorted to as a medium of proof, but are not the only legal proof.

2D POINT.—What is the law of Maryland on this subject?

The brief of the Plaintiff in error, at p. 40, relies upon the old act of 1676, ch. 6, annulling all marriages celebrated differently from its requirements.

In Chiseldine *vs.* Brewer, 1 H. & McH. 152, it was held that the consent of the parties was sufficient to constitute marriage, and this decision based on a cohabitation beginning in 1712, is conclusive to show that this old act of 1676, was repealed or did not annul such a marriage as now contended.

But it is argued that this decision was before the marriage act of Maryland, which they say annuls the marriage if not celebrated by a minister. 1777, ch, 12, § 3.

But this act simply declares that marriages shall not be celebrated unless by ministers, &c., under a penalty of five hundred dollars. Cohabitation as man and wife is still sufficient in Maryland to prove marriage. See ~~G. & J. p~~ 7 Gill 247

There is no provision which annuls the marriage, and we maintain that by analogy to all the decisions elsewhere, the provisions of this statute are merely directory. *

*The decision of the chancellor in 1 Bland 481 is not law in Maryland.

The Pennsylvania statute has been held only directory, though its provisions are more stringent.

6 Binney's Reports 405, 2 Watts. 11.

And so virtually ruled in this Court in 6 How. 587, in relation to a Pennsylvania marriage. The same principle affirmed in

2 California, 503.
2 Greenleaf's Ev. § 460.
8 G. & J. 54.
1 W. Black. R. 632.
31 Mississippi Rep 367.

The Legislature never designed to bastardise innocent offspring for the omissions or ignorance of their parents.

Then we have this great principle of matrimonial union based alone on the contract of competent parties, coming down to us unimpaired from the remotest period of time. Indeed, it may be said to have originated in the primeval marriage of our first parents, and to be a law of nature itself. Adopted every where in Europe by the civil, the canon and the common law, it was transplanted to this continent by our Pilgrim Fathers, and fostered by the judicial decisions of all our States, as peculiarly applicable to the necessities of the colonial settlement.

Thus engrafted in our judicial system, without a doubt resting on it as a legal contract of marriage, as ruled by this Court in 10 Howard, p. 181, it stands at this day and through all ages of the world, as a consecrated and unaltered principle of the law that marriage is but a civil contract, and when proved by competent evidence of the factum it requires only consent of competent parties. All other sanctions and safeguards are purely ecclesiastical or religious. In the words of a great writer, "marriage is but a form, but a form so holy—it adds the blessing of heaven to the blessing of earth."

That the Legislature may uproot this time-honored principle, we do not deny, but we do maintain that where innocent offspring are to be bastardised, it requires clear and unmistakeable evidence of the Legislative will to annul the marriage of their parents. Every presumption is in favor of legitimacy, and the Courts lean always in favor of that claim.

It was unnecessary, perhaps, to our case, that such an issue should have been presented; without it the verdict would have been the same. But if this Court considers it as fairly presented on this record, we confidently stand by the ruling of Judge Giles as unassailable and irreversible in this Court and on this continent.

The argument in the adverse brief, p. 29, that there is no evidence of a *de facto* marriage by consent of the parties, because Mrs. Craufurd did not swear to it, is entirely in opposition to the right of the jury to infer it in any way from the declarations of Thomas B. Craufurd and the whole evidence, and is also in conflict with the rulings in

3 Bradf. R. 370 and 374, &c.
1 Hill, R. 270.
15 N. Y. R., 345.
4 Bradf. p. 343.

Nor is there any more foundation for the criticism attempted on the Court's instruction, in page 25 of their brief.

The objection is that the Court based a presumption of legitimacy alone on cohabitation for a moment of time.

But this is a mistake. The Court's presumption arises from a variety of facts, of which "living together at any time as man and wife, is only one circumstance. The instruction incorporates, as the basis of the presumption, other facts, such as the acknowledgment of Craufurd that she was his wife, and her treatment as such, and the acknowledgment of her children as his, and the calling of them by his name—all these, with cohabitation at any time as man and wife, raise the presumption of legitimacy, and correctly raise it.

1 Howard, p. 232.
7 Gill, 263.

We had a right to segregate these facts, and ask for the presumption based on them.

4 Md. 262.
6 —— 19.

That the evidence expressly proved that they cohabited for several years as man and wife at Greenwood, will be seen in Record, p. 14.

The conclusive proofs of this marriage as it stands upon this record may be grouped together in a few propositions of fact that are uncontradicted.

1. The whole conduct of Mrs. Craufurd, repels the idea of fraud, because, faithful to the teachings of her husband, she never claimed to be a wife until after the death of David Craufurd the intestate, (See Record, p. 13.) but carrying out, for her children's sake, the policy of her dead husband, she even after his death, but in the lifetime of David, accepted deeds from her children by the name of Elizabeth Taylor, as proved by the Plaintiff in error.

Record, pages 90 and 91.

And while she is proved to have executed one deed as a marksman, (being wholly uneducated,) by the name of "Craufurd" which somebody, wrote, yet that very deed in its commencement, styles her "Elizabeth Taylor, *alias* Craufurd."

Record, 88.

These facts negative the idea of fraud and conspiracy on her part, during the long years from her alledged marriage in 1835 to the death of David Craufurd in 1859, during which we have proved the ground-work of our title by evidence the most convincing, if not fabricated.

2. The taking her to Greenwood and placing her at the head of his table after his brother removed to his own property, clearly show the devotion of Thomas B. Craufurd to this unfortunate, but beautiful woman, and this marriage, is fortified by his confiding to a few friends in 1843, that he had been married to her for several years.

Record, pages 12 and 14.

3 We have the great and controlling fact that the second child of this sexual intercourse Sarah Jane, was baptized as an acknowledged bastard, on the 30th August, 1835.

See the Register of Baptism, produced and proved by Callan to be in the handwriting of Fijeac.

Record p. 13.

* The decision of the Chancellor

And the next child, Thomas B. Craufürd, is baptized in the same Church on the 30th July, 1837, as the child of Thomas B. Craufurd and Elizabeth Taylor, his wife, born 7th September, 1836

> See this Baptismal Record produced and proved to be in the handwriting of Rev. Mr. Donellan, both by him and by Callan.
>
> Record, pages 10 and 14.

These original Baptismal entries conclusively establish that a change was claimed to have taken place in the relation of the parents of the second and third child intermediate the two baptisms, and the theory of fraud and conspiracy must start with the baptism of this third child in 1837, and must encounter the stubborn fact that the mother, who originated this fraud, for 22 long years thereafter acted publicly in a way to destroy all the fruits of that fraud, by never claiming to be a wife, and by accepting deeds, &c., as an unmarried woman.

4. If these baptismal registers do not truly testify to the fact of marriage, then Sarah Evans, the wife of the sexton of St. Patrick's, and the deceased sister of Elizabeth Taylor, was privy to this fraud and conspiracy, for she was the sponsor before Father Fijeac, in 1835, for the acknowledged illegitimate child, and also sponsor before Father Donellan, in 1837, for the child baptised as legitimate.

> See the Record, pp. 13 and 14.

As recorded sponsor she was present on both occasions, and must have believed that an intermediate marriage had occurred between her sister and Craufurd, as Mrs. Crauford swears she was a witness to it, or she was an actor also in this long hidden conspiracy.

5. That there was an entry of this very marriage in the official record, is proved by the imperfect recollection of Father Donellan, who would hardly have stated such a fact without conscientiously believing it, as the lost records might be found and his statement falsified.

Father Fijeac's memory is a blank, not only to the marriage, but to the existence of a marriage record, and to his acquaintance with Elizabeth Taylor, when his own handwriting to the baptismal record of 1835, shows that he baptised her second child as illegitimate.

Here, then, is a network of circumstantial evidence long existing, and harmonious in all its parts, which can only be explained by giving implicit credence to the truthful testimony given by Mrs. Craufurd to the factum of a secret marriage which, from adequate motives, she so faithfully guarded for 22 years.

We can only say that when a branch of this case was tried on the question of administration, we were not then prepared with many of the material facts now on this record.

E. W. BELT,
R. T. MERRICK,
R. J. BRENT,
T. G. PRATT,
For Defendants in Error.

1 Rob. Ecc. 312, 313 [illegible]

* The decision of the Chancellor

APPENDIX.

SUPREME COURT OF THE UNITED STATES.

R. S. BLACKBURN vs. G. T. CRAUFURD, ET AL.

It is agreed that the following corrections shall be made in the printed record, viz :

1. In 11th page, answer to the 4th Interrogatory, read "I entered said baptism in said register," instead of "I never saw," &c.

2. In 11th page and eleventh line from bottom, read "duty of a pastor," instead of "entry of a pastor," &c., and in the next line below, read "rites," instead of "rights."

3 In page 11, and the bottom line, "the last four lines of the answer to the 5th Interrogatory," excluded by the Court, are agreed to be the same as found on this 11th page, in the answer to the 5th Interrogatory, beginning with the words "I have no recollection," and ending with words "fact existed."

4. It is agreed that the entry referred to, from the baptismal register, in the 32d line of 13th page, is as follows: "Sarah Jane, natural child of Elizabeth Taylor, born 31st December, 1834, and baptised 30th August, 1835. Sponsor, Sarah Evans."

5. In 18th line from the bottom of page 93, read "and two of them," instead of "that they."

6. In Court's 2d Instruction, page 93, read "or from," instead "or find "

7. In Plaintiff's 3d Prayer. p. 92, read "shall find," instead of "shall prove."

8. In 3d line from bottom of 93d page, strike out the words "and treated her as such; that she was his wife," and insert the following: "that she was his wife, and always treated her as such," in lieu of the words stricken out

R. J. BRENT,
For Defendants in Error.
TH S ALEXANDER,
For Plaintiff in Error.

* of the decision of the Chancellor

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This Exception involves the evidence of Rev. Mr. Donellan, and the brief answers *all* the objections made to that testimony, and especially to his recollection of the contents of the lost marriage record.

2d Exception, - - - - - - - - 12—13

In this Exception we maintain that the Baptismal entry of the Baptism of Sarah Jane Craufurd was, under the circumstances, admissible to fix the date of the marriage, which Mrs. Craufurd swore was on the second day thereafter.

3d Exception, - - - - - - - 13—14

In this there was no error in admitting the Baptismal Record of the third child, for the reasons stated in the brief.

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In these pages will be found an elaborate discussion of the question whether the Record of a former suit, relied on by the Plaintiff in Error, was not properly excluded.

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SUPPLEMENT TO THE BRIEF,

Filed by the Plaintiff in Error, in the Case of BLACKBURNE vs. LESSEE *of* CRAUFURD, AND OTHERS.

Bacon's collection of the Laws of Maryland, published in the year 1765, gives the titles of many laws passed "for the service of Almighty God," "for the publication of marriages," "touching marriages," and "relating to Registers of marriages," which were repealed or have been superseded by more modern legislation.

In the present confused, and it is to be feared imperfect state of our Colonial records, it would be very difficult and perhaps impossible to retrieve the text of all those acts. The results of an examination, by no means superficial, are that from the settlement of the Colony, marriage has been respected as a religious ordinance, to the due celebration of which the presence of a minister of religion was generally *necessary*, and that the formal and public celebration of the rite by the intervention of some third person as celebrant was deemed *essential* to the conservation of morals and good order of society. Those propositions are fully sustained by the following abstracts from acts, some of which have been only discovered since the preparation and printing of the former Brief.

Act 1640, chap. 7, touching marriages, Liber C. W. H., folio 69.

No party may solemnize marriage with any woman afore the banns 3 days before published in some chappell or other place of the county where publique intrusts are to be notified or else afore oath made and caution entered in the county court that neither partie is apprentice or ward, or pre-contracted or within the forbidden degrees of consanguinity, or under government of parents or tutors, and certificate of such oath and caution taken from the Judge or Register of the Court upon paine of fine and recompense to the party grieved.

The certificate was evidently required as the warrant or authority to the person who might be called on to celebrate the marriage.

Act 1658, ch. 5, concerning a Register of Births, Marriages and Burialls, Liber Y, folio 60.

The names of all that shall be borne, married or burried within this Province shall be exhibited to the clerk of every respective County Court who shall keepe a right register thereof. * * *

Act 1658, ch. 7, for the publication of marriages, Liber Y, folio 62.

[illegible]

That all persons who shall desire marriage have liberty to apply themselves either to a magistrat or minister for the contracting thereof. That all persons within this Province intending marriage shall make publication thereof, either at the County Court, church, chapple, next where they dwell, or meeting house, and that at such tyme as such court, church, chappell or meeting be full, and thereby capable to take cognizance thereof, from which court, church, chappell or meeting certificate being given forth, it shall be lawful for such magistrat or minister to marry such persons as aforesaid. And if any person shall presume to contract marriage without such publication and certificate as aforesaid, every such person so contracted or marryed shall be lyable to a fine of one thousand pounds of tobacco; and every such magistrat or minister contracting or marrying without such publication and certificat as aforesaid, shall be lyable to a fine of five thousand pounds of tobacco.

* of the [illegible]

As there was at the time of passing this act no established church in the Colony, the rites of marriage might be celebrated by any minister of religion or magistrate. But the implication is inevitable that no other person could officiate on such occasion, else such other person might do with impunity that which the minister of religion and magistrate were expressly prohibited from doing. The necessity for the intervention of some third person as celebrant is assumed by the entire enactment. The policy of the law in both respects would be defeated by a concession to the parties of the privilege of contracting marriage in the absence of any celebrant.

The date of this act deserves notice. It was passed five years after one of Cromwell's Parliaments had conferred authority on justices of the peace to celebrate marriage in England.

Act 1662, ch. 5, for the publication of marriages, Liber Y, folio 138.

3 y. [illegible] 1636 [illegible]

That all persons who shall desire marriage have liberty to apply themselves either to a minister or pastor or magistrate for the contracting thereof. And all persons within this Province intending marryage shall make publication thereof either at the church or chappell next where they dwell, County Court or meeting house, and that at such times as such church, chappell, County Court or meeting house be full, and thereby capable to take cognizance thereof. And that it shall and may be lawful upon certificate had from the minister, pastor or county court where such publication shall have been made, (three weeks after such publication,) for either minister, pastor, or magistrat to joyne in marriage such persons as aforesaid. And if any person shall presume to contract marryage without such publication be made and certificate had as aforesaid, or without particular lycense from the Lieutenant-Generall or the Governor of this Province or privately within the lymitts of this Province contract marryage, every person so contracted or marryed shall be liable to a fine of one thousand pounds of tobacco and every such pastor, magistrate or minister joyning in marriage any persons without such publication or any ways infringing this act, shall be lyable to a fine of five thousand pounds of tobacco. And that all contracts or promises of marryage not made before some minister, pastor or magistrate with *two sufficient witnesses* shall be and is hereby declared to be null and voyd.

The necessity for the intervention of a third person as celebrant is yet more pointedly affirmed by this act. And to ensure more fully the great objects of regularity and publicity, the presence of two witnesses additional to the celebrant is declared essential to the validity of the marriage. This act remained in force until the year 1676.

Act May 1676, ch. 6, for the publication of marriages, Liber W. H. folio 25. repeals act of 1662 3y. Cont'd till 1692

That all persons who shall desire marriage have liberty to apply themselves either to a priest, minister, pastor or magistrate for ye contracting thereof.

All persons within this Province intending marriage shall make publication thereof either at the church, chappell, county court, or meeting house next where they dwell, and that at such times as such church, chappell or meeting house be full, and thereby capable to take cognizance thereof. And it shall and may be lawful upon certificate had from ye priest, minister, pastor, magistrate or county court where such publication shall have been made three weeks after ye's publication, for either minister, pastor or magistrate to join in marriage such persons as aforesaid. And if any person shall presume to contract marriage without such publication made and certificate thereof had so as aforesaid, or without particular license from ye Right Ho'ble ye Lord Propy. or his Lieutenant Gen'll or chief Governor for ye time being, doo privately within ye county of this Province contract marriage, every person so contracted or marryed shall be lyable to a fine of

all pr
epeals

one thousand pounds of tobacco; and every such priest, minister, pastor or magistrate joyning in marriage any person without such publication or license, or any wayes infringing this act, shall be lyable to a fine of five thousand pounds of tobacco.

That all such marriages as shall not be made or celebrated before some priest, minister, pastor or magistrate, with *five sufficient witnesses at least*, according to the form before mentioned, shall be and are hereby declared to be void.

And all priests, ministers, pastors and magistrates who (according to ye law of this Province) do usually joyn people in marriage, shall join them in ye manner and using ye words following. The man, taking ye woman by the right hand, shall say: "I, A. B., doo take thee, C. D., to my wedded wife, to have and to hold from this day forward, for better for worse, for rich or for poor, in sickness and in health, till death us doo part, and thereto I plight thee my troth;" which being finished, he shall let her hand goo. Then ye woman, taking the man by ye right hand, shall say: "I, C. D., doo take thee, A. B., to my wedded husband; to have and to hold from this day forward, for better for worse, for rich or for poor, in sickness and in health, till death us doo part, and thereto I plight thee my troth;" which being finished, the priest, minister, pastor, or magistrate shall say: "Having hereunto by law authorized, doo pronounce you lawful man and wife."

That the priest, minister, pastor or magistrate, are by virtue of this act, empowered to ask, demand, receive, and take from ye parties so married or joyned together, the sum of one hundred pounds of tobacco.

The act of 1692, ch. 14, seems to be a transcript of the act of 1676. It was at the first a temporary law. It is declared perpetual by the acts 1699, ch. 46, and 1700 ch 8, but seems to have been included in the general repealing acts of 1704, being supposed to be superseded by the intervening acts.

By act 1700, ch. 1, "for the service of Almighty God and establishment of religion in this Province, according to the church of England," provision was made for the organization of parishes and the support of the clergy, and for the keeping of registers of marriages, births and deaths—amongst others are the following provisions:

And to prevent all illegal and unlawful marriages not allowable by the Church of England, but forbidden by the Table of Marriages, Be it enacted by the authority of'd, that noe minister, priest or magistrate shall presume to joyne together in marriage any person whatsoever contrary to the table of marriages by this act appointed to be sett up in every parish church within this Province, nor shall any persons forbidden to marry together by such tables of marriage, presume to be joyned in marriage under the penaltys following, (that is to say,) under the penalty of five thousand pounds of tobacco upon the minister, priest or magistrate joyning such persons in marriage, and under the like penalty of five thousand pounds of tobacco upon the persons so joyned in marriage, to our Sovereign Lord the King, for the uses in this act hereafter mentioned.

And to prevent any lay persons from joyning any persons in marriage where a minister or priest can be had, and to ascertain what shall be paid for marriage, Be it likewise enacted by the authority af'd, that in every parish where any minister or incumbent shall reside or have charge of soules therein, no ~~trustee~~ justice or magistrate shall joyne any persons in marriage under the penalty of five thousand pounds of tobacco for such offence, to our Sovereign Lord the King. And that it shall be lawful for every minister to take and receive of every person or persons by him married the sum of five shillings sterling, and no more, any law to the contrary notwithstanding. Provided such persons come to such parish church or chappell at time of divine service for contracting such marriage.

Bacon informs us that this act being laid before his Majesty in council, was not approved in all its parts; and was sent back with amendments proposed; which were accepted, and an act pursuant thereto passed, which is,

Act 1702, ch. 1, "for the establishment of religious worship in this Province according to the Church of England," and for the maintenance of ministers.

Sec. 4 and 5 of this act are literal transcripts of the sections recited from the act of 1700.

The entire act is excepted from the operation of the general repealing act 1704, ch. 77.

The Church of England is by this act declared to be the established religion of the Colony, and the Table of Marriages observed by that church is assumed to be adopted as parcel of the law of the Colony.

Marriages against the table are then prohibited by penalties imposed on the minister who shall *join* parties in marriage contrary to the Table, and on the parties *so joined* in marriage.

No penalty is imposed on parties contracting marriage without the intervention of a minister. *Was* this *casus omissus?* The answer is to be found in the next section, which was passed avowedly "to prevent any *lay persons* from joining any persons in marriage where a minister or priest can be had." The penalty is imposed on any *justice or magistrate* who shall join any person in marriage in any parish where a minister or priest can be had.

No penalty is imposed on any layman who is not a justice or magistrate. The provision of the law would therefore fall short of its expressed object, unless we assume that by the existing law the intervention of some third person as celebrant was essential to the validity of the marriage, and that the observance of this additional accident was to be enforced by penalties imposed on the celebrant and on the parties.

Act 1704, ch. 72, for publication of marriages enacts:

1. That all persons who desire marriage shall apply themselves either to a minister, pastor or magistrate, for the contracting thereof.

2. That all persons within this Province intending marriage shall make publication thereof, either at the church, chappell, county court or meeting house next where they dwell, and that at such time as such church, chappell or meeting house shall be full, and thereby capable to take cognizance thereof. And that it shall and may be lawful upon certificate had from the minister, pastor or county court where such publication shall have been made, three weeks after the said publication, for either minister, pastor or magistrate (where no minister can be had) to joyn in marriage such persons aforesaid; and if any person shall presume to contract marriage without such publication made and certificate thereof had as aforesaid, or without particular lycense from the Governor, for the time being, do privately, within the limits of this Province, contract marriage, every person so contracted or marryed shall be liable to a fine of one thousand pounds of tobacco, and every such minister, pastor or magistrate so joyning in marriage any persons without such publication or lycense, or in any ways infringing this act shall be lyable to a fine of five thousand pounds of tobacco. * * * * *

3. That all ministers, pastors and magistrates who, according to the law of this Province, do usually joyn people in marriage, shall join them in manner and form as is set down and expressed in the Liturgy of the Church of England—which being finished,

the minister, pastor or magistrate shall say: Having hereunto by law authorized, do pronounce you lawful man and wife.

The act of 1715, ch. 44, sec. 25, prohibits all ministers, pastors and magistrates, or other persons whatsoever, who, according to the laws of this Province, do usually join people in marriage, from joining in marriage any negro whatsoever, or mulatto slave, with any white person, under a penalty of five thousand pounds of tobacco.

Reference to this last act is made because of its recognition of the authority of the magistrate to celebrate marriage. In this respect there is no inconsistency between it and the preceding act of 1704.

In the next place, it assumes that the law has defined affirmatively the persons who may, and implicitly those who may not celebrate the marriage rite.

The reference may be useful for another purpose. The act does not in so many words annul or even prohibit the intermarriage of a negro or mulatto with a white person. It contents itself with the imposition of a penalty on the celebrant of such marriage. It is nevertheless the indubitable law of Maryland that all such marriages are utterly void. The intermarriage of persons of different races was against the policy of the law, and the offence was not supposed to be condoned or modified in its character by the imposition of a fine on the celebrant.

In illustration of this view I may state, that anterior to the act of 1777, there is no statute of Maryland which annuls or expressly prohibits incestuous marriages. The nearest approach to prohibition is to be found in sec. 4 of the act of 1702, and the corresponding section in the act of 1700, which imposes a penalty on the celebrant of such marriage, and avowedly "to prevent all illegal and unlawful marriages not allowable by the Church of England, but forbidden by the table of marriages." There can be no doubt that incest was prohibited as contrary to good morals; and as there was no tribunal vested with jurisdiction over causes matrimonial, the only process to vindicate the policy of the law was to be found in a resort to the nominal jurisdiction of the courts of law, which would assume that the act to be punished was a nullity.

The act of 1717, ch. 15, for the publication of marriages and to all [illegible]
prevent unlawful marriages, is to be found in Kilty's collection [illegible]

of the Maryland Laws. It will be sufficient therefore to state that it provides :

1. That all persons who desire marriage shall apply themselves to a minister for the contracting thereof—and shall cause the banns to be published, according to the rubrick of the Church of England, in the parish where the woman resides. And in case there be no minister, curate or reader of such parish, notice of the intended marriage shall be set up at the court house door.

2. A penalty of five thousand pounds of tobacco is imposed on the man who shall privately contract marriage without publication as aforesaid, or a particular license from the Governor. And a like penalty is imposed on the minister joining in marriage any persons without license or publication.

3. "And for the more effectually avoiding secret and clandestine marriages," a like penalty is imposed on persons *getting* their marriages solemnized in a neighboring Province.

4. Assesses the fees for marriage.

5 Provides that the act shall not extend to any persons of persuasions in religion different from that of the Church of England; but that all such persons, and the manner of their proceeding in marriage, may entirely remain unaltered by this act, and in the same circumstances as if the act had not been passed.

The last act in the series is the act of February, 1777, ch. 12, which is likewise to be found in Kilty's collection—was sufficiently abstracted in the former statement.